

**FEDERAL FACILITY
SITE REMEDIATION AGREEMENT**

for

NAVAL SUPPLY CENTER, ALAMEDA ANNEX

September 29, 1992

**TOXICS LEGAL OFFICE
State of California
Department of Toxic Substances Control
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STATE OF CALIFORNIA
AND THE
UNITED STATES DEPARTMENT OF THE NAVY

IN THE MATTER OF:)	Federal Facility Site
)	Remediation Agreement Under
The U.S. Department)	California Health and
of the Navy)	Safety Code §§ 25355.5,
)	25353 and 25347.6
Naval Supply Center,)	
Alameda Annex)	

Based on the information available to the Parties on the effective date of this Federal Facility Site Remediation Agreement (Agreement), and without trial or adjudication of any issues of fact or law, the Parties agree as follows:

1. PURPOSE

1.1 To reach the purposes described below, the Parties agree that their overall intent in executing this Agreement is to fully cooperate in accelerating and streamlining the remediation process at Naval Supply Center, Alameda Annex to the maximum extent possible consistent with applicable state and federal laws. The Parties intend to use consensus problem solving, to the maximum extent practicable, to achieve the Parties' primary goal of environmental restoration.

1.2 The general purposes of this Agreement are to:

(a) Ensure that the environmental impacts associated with past and present activities at Naval Supply Center, Alameda Annex are thoroughly investigated.

(b) Ensure that appropriate remedial action is taken as necessary to protect the public health, welfare and the environment;

(c) Establish a procedural framework and schedule for developing, implementing and monitoring appropriate response

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actions at the Site in accordance with applicable state law and other applicable promulgated requirements, and consistent, to the maximum extent possible, with the priorities, guidelines, criteria, and regulations contained in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).

(d) Facilitate cooperation, exchange of information and participation of the Parties in such action; and,

(e) Ensure the adequate assessment of potential injury to natural resources, and the prompt notification of and cooperation with the Federal and State Natural Resources Trustees necessary to guarantee the implementation of response actions achieving appropriate cleanup levels.

(f) Recognize and reach compromise on perceived conflicts between State and Department of Defense response authorities under applicable state and federal law, and to preserve any rights or entitlements each party may have under applicable state and federal law.

1.3 Specifically, the purposes of this Agreement are to:

(a) Establish requirements for the performance of pre-remedial work and Remedial Investigation (RI) to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release and threatened release of hazardous substances, wastes (only to the extent that the definition of waste in Water Code Section 13050 covers hazardous substances, pollutants, and contaminants), pollutants, or contaminants at the Site and to establish requirements for the performance of a Feasibility Study (FS) for the Site to identify, evaluate, and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, wastes (only to the extent that the definition of waste in Water Code Section 13050 covers hazardous substances, pollutants, and contaminants), pollutants, or contaminants at the Site in accordance with applicable state and federal law;

(b) Identify the nature, objective, and schedule of response actions to be taken at the Site. Response actions at the Site shall attain that degree of cleanup of hazardous substances, wastes (only to the extent that the definition of waste in Water Code Section 13050 covers hazardous substances,

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1 pollutants, and contaminants) , pollutants or contaminants
2 mandated by applicable state and federal law;
3

4 (c) Implement the selected remedial actions(s) in
5 accordance with applicable state and federal law;
6

7 (d) Assure compliance, through this Agreement, with
8 applicable state and federal hazardous waste and water quality
9 laws and regulations for matters covered herein;
10

11 (e) Coordinate response actions at the Site with the
12 mission, national security, and support activities at Naval
13 Supply Center, Alameda Annex;
14

15 (f) Expedite the cleanup process to the extent
16 consistent with protection of human health and the
17 environment;
18

19 (g) Provide for initiation, development, selection and
20 implementation by the Navy of response actions, including
21 operable units and the final remedial action(s), to be
22 undertaken at Naval Supply Center, Alameda Annex.
23

24 (h) Provide for State oversight of and participation in
25 the initiation, development, selection and implementation of
26 response actions, including operable units and the final
27 remedial action(s), to be undertaken at Naval Supply Center,
28 Alameda Annex, including the review of all applicable data as
29 it becomes available and the development of studies, reports,
30 and action plans; and, preserve the state's right to
31 enforcement pursuant to applicable state and federal law; and
32

33 (i) Provide for operation and maintenance of any
34 remedial action selected and implemented pursuant to this
35 Agreement.
36

37 (j) Identify operable unit (OU) alternatives which are
38 appropriate at the Site prior to the implementation of final
39 remedial action(s) for the Site. OU alternatives shall be
40 identified to the parties as early as possible prior to
41 proposal of OUs to the State. This process is designed to
42 promote cooperation among the Parties in identifying OU
43 alternatives prior to the final selection of OUs.
44
45
46
47

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2. PARTIES

2.1 The Parties to this Agreement are the Navy, and the State of California. The terms of the Agreement shall apply to and be binding upon the State of California and the Navy.

2.2 This Agreement shall be enforceable against all of the Parties to this Agreement. This Section shall not be construed as an agreement to indemnify any person. The Navy shall notify its agents, members, employees, response action contractors for the Site, and all subsequent owners, operators, and lessees of the Site of the existence of this Agreement.

2.3 Each Party shall be responsible for ensuring that its contractors comply with the terms and conditions of this Agreement. Failure of a Party to provide proper direction to its contractors and any resultant noncompliance with this Agreement by a contractor shall not be considered a Force Majeure event or other good cause for extensions under Section 9 (Extensions), unless the Parties so agree, or unless established by the Dispute Resolution process contained in Section 12. The Navy will notify the State of the identity and assigned tasks of each of its contractors performing work under this Agreement upon their selection.

2.4 The State of California is represented by the California Department of Toxic Substances Control (DTSC) as lead agency and the California Regional Water Quality Control Board (RWQCB) as support agency. The responsibilities of the lead and support agencies are set forth in this Agreement, the Memorandum of Understanding between DTSC and the State Water Resources Control Board and the Regional Water Quality Control Boards for the Cleanup of Hazardous Waste Sites (Aug. 1, 1990), and the Regional Memorandum of Understanding between DTSC, Region 2, and RWQCB, San Francisco Bay Region, when and if it becomes effective. In the event of conflict, between any of the above documents and this Agreement, this Agreement shall govern. Copies of said memorandum(s) shall be made an attachment(s) to this Agreement, and are incorporated herein by this reference. The State may change the State lead agency during the performance of this Agreement. Such change of State lead agency is not subject to dispute resolution, but may constitute good cause for a request for an extension under Section 9 of this Agreement. The State shall notify the Navy of such change of State lead agency within 14 days after the decision is made. If the State lead agency changes, the new lead agency will accept all work previously accepted by the prior lead agency for the State.

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1
2 3. JURISDICTION
3

4 3.1 The Parties enter into this Agreement pursuant to the
5 following authorities:
6

7 Chapters 6.5 and 6.8 of Division 20, sections 102 and
8 25355.5(a)(1)(C), of the California Health and Safety Code,
9 Division 7 of the California Water Code, CERCLA sections
10 120(a)(4), 120(f), 121, 42 U.S.C. sections 9620(a)(4),
11 9620(f), and 9621, the National Environmental Policy Act, 42
12 U.S.C. section 4321, and the Defense Environmental Restoration
13 Program (DERP), 10 U.S.C. section 2701 et seq.
14

15 4. DEFINITIONS
16

17 4.1 Except as noted below or otherwise explicitly stated, the
18 definitions provided in the California Health and Safety Code,
19 California Water Code, and Titles 22 and 23 of the California Code
20 of Regulations shall control the meaning of terms used in this
21 Agreement. In the event of conflict in definitions contained in
22 California law, DTSC and RWQCB shall notify the Navy of the
23 conflict immediately upon discovery of the conflict, and shall
24 resolve their conflict pursuant to the dispute resolution process
25 in the Memorandum of Understanding between DTSC and RWQCB. DTSC
26 and RWQCB shall notify the Navy of their decision within 10 days
27 after the conflict is resolved. Any conflict between state and
28 federal law is subject to the dispute resolution process as
29 provided in Section 12 of this Agreement.
30

31 (a). "Agreement" shall refer to this document and shall
32 include all Appendices to this document to the extent they are
33 consistent with the original Agreement as executed or
34 modified, or amended in accordance with Section 37 (Appendices
35 and Attachments).
36

37 (b). "ARARs" shall mean state and federal applicable or
38 relevant and appropriate requirements, standards, criteria, or
39 limitations selected in the manner set forth in section 121 of
40 CERCLA. ARARs shall apply in this same manner and to the same
41 extent as are applied to any non-governmental entity,
42 facility, unit, or site, as set forth in CERCLA section
43 120(a)(1), 42 U.S.C. section 9620(a)(1), subject to CERCLA
44 section 121(d)(4), 42 U.S.C. section 9621(d)(4) and E.O. 12580
45 section 2(d) & (g).
46

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1 (c). "CERCLA" shall mean the Comprehensive Environmental
2 Response, Compensation and Liability Act, Public Law 96-510,
3 42 U.S.C. § 9601 et. seq., as amended by the Superfund
4 Amendments and Reauthorization Act of 1986, Public Law 99-499
5 (SARA), and any subsequent amendments.
6

7 (d). "Days" shall mean calendar days, unless business
8 days are specified. Any submittal that under the terms of
9 this Agreement would be due on Saturday, Sunday, or state or
10 federal holiday shall be due on the following business day.
11 References herein to specific numbers of days shall be
12 understood to exclude the day of occurrence.
13

14 (e). "DERP" shall refer to the Defense Environmental
15 Restoration Program, as defined in 10 U.S.C. section 2701, et
16 seq.
17

18 (f). "DTSC" shall mean the California Department of Toxic
19 Substances Control, its successors and its employees and
20 authorized representatives.
21

22 (g). "Federal Facility" shall include Naval Supply
23 Center, Alameda Annex and any real property subjects to the
24 jurisdiction of the Base Commanding Officer (BCO), as of the
25 effective date of this Agreement an as further described in
26 the record of deeds filed in the Cognizant County Recorders
27 Office(s). A general depiction of the "Federal Facility" is
28 set out at Attachment "A" (Maps). The "Federal Facility"
29 shall exclude any satellite site(s) under the jurisdiction of
30 the BCO that are not depicted in Attachment A.
31

32 (h). "Feasibility Study" or "FS" shall have the same
33 meaning as provided in the California Health and Safety Code
34 section 25314, CERCLA, and the NCP. In the context of this
35 agreement FS shall mean a study conducted pursuant to state
36 law and consistent with the NCP which fully develops, screens
37 and evaluates in detail remedial action alternatives to
38 prevent, mitigate, or abate the migration or the release of
39 hazardous substances, pollutants, or contaminants at and from
40 the Site. The Navy shall conduct and prepare the FS in a
41 manner to support the intent and objectives of Section 17
42 (Statutory Compliance and Corrective Action) of this
43 Agreement.
44

45 (i). "Meeting," in regard to Project Managers, shall
46 mean an in-person discussion at a single location or a
47 conference telephone call of all Project Managers. A

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1 conference call will suffice for an in-person meeting at the
2 concurrence of all the Project Managers.
3

4 (j). "National Contingency Plan" or "NCP" shall refer to
5 the regulations contained in 40 CFR 300.1 et seq., and any
6 amendments thereto.
7

8 (k). "Natural Resources Trustees" and "Federal or State
9 Natural Resource Trustees" shall have the same meaning as
10 provided in CERCLA and the NCP.
11

12 (l). "Natural Resource Trustee(s) Notification and
13 Coordination" shall have the same meaning as provided in
14 CERCLA and the NCP.
15

16 (m). "Navy" shall mean U.S. Navy, its employees,
17 members, agents, and authorized representatives. "Navy" shall
18 also include the Department of Defense (DOD), to the extent
19 necessary to effectuate the terms of this Agreement,
20 including, but not limited to, appropriations and
21 Congressional reporting requirements.
22

23 (n). "Operable Unit" or "OU" shall have the meaning
24 provided in the NCP.
25

26 (o). "Operation and maintenance" shall mean activities
27 required to maintain the effectiveness of response actions.
28

29 (p). "Promulgated" shall have the same meaning as
30 provided in section 300.400(g)(4) of the NCP.
31

32 (q). "RCRA" or "RCRA/HSWA" shall mean the Resource
33 Conservation and Recovery Act of 1976, Public Law 94-580, 42
34 U.S.C. § 6901 et. seq., as amended by the Hazardous and Solid
35 Waste Amendments of 1984, Public Law 98-616, and any
36 subsequent amendments.
37

38 (r). "Remedial Action Plan" or "RAP" shall have the same
39 meaning as provided in California Health and Safety Code
40 section 25356.1.
41

42 (s). "Remedial Design" or "RD" shall have the same
43 meaning as provided in California Health and Safety Code
44 section 25322.1, CERCLA, and the NCP.
45

46 (t). "Remedial Investigation" or "RI" shall have the
47 same meaning as provided in California Health and Safety Code

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1 section 25322.2, CERCLA, and the NCP. In the context of this
2 agreement, it shall mean that investigation conducted pursuant
3 to state and federal law and consistent with the NCP. The RI
4 serves as a mechanism for collecting data for Site evaluation
5 and waste characterization and conducting treatability studies
6 as necessary to evaluate performance and cost of the treatment
7 technologies. The data gathered during the RI will also be
8 used to conduct a baseline risk assessment, perform a
9 feasibility study, and support the design of a selected
10 remedy. The Navy shall conduct and prepare the RI in a manner
11 to support the intent and objectives of Section 17 (Statutory
12 Compliance and Corrective/Remedial Action).

13
14 (u). "Remedy" or "Remedial Action" or "RA" shall have
15 the same meaning as provided in section 25322 of the
16 California Health and Safety Code, CERCLA, and the NCP, except
17 with respect to the expenditure of federal funds for the
18 relocation of residents, businesses, and community facilities.
19 With respect to such relocations, the authority to make
20 determinations as to the expenditure of federal funds for this
21 purpose, is retained by the Navy (as delegated by the
22 President of the United States), consistent with CERCLA,
23 section 104(i)(11)(B) and E.O. 12580. The State retains its
24 authority with respect to the expenditure of state funds for
25 such purposes.

26
27 (v). "Remove" or "Removal" shall have the same meaning
28 as provided in section 25323 of the California Health and
29 Safety Code, CERCLA, and the NCP.

30
31 (w). "RWQCB" shall mean the Regional Water Quality
32 Control Board, San Francisco Bay Region, its successors and
33 its employees, members and authorized representatives.

34
35 (x). "Site," for purposes other than obtaining permits,
36 shall include the Federal Facility as defined above, and any
37 area necessary for the performance of response actions. For
38 the purposes of obtaining permits, the term "on-site" shall
39 have the same meaning as provided in the NCP, and "off-site"
40 shall mean all locations that are not "on-site".

41
42 (y). "State" shall mean the State of California and its
43 employees and authorized representatives, and shall refer to
44 both DTSC and the RWQCB unless otherwise specified.
45
46
47

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1 5. DETERMINATIONS

2
3 5.1 Naval Supply Center, Alameda Annex is a facility under
4 the jurisdiction, custody, or control of the U.S. Department of
5 Defense within the meaning of Executive Order 12580, 52 Federal
6 Register 2923, 29 January 1987. The Department of the Navy is
7 authorized to act on behalf of the Secretary of Defense for all
8 functions delegated by the President through Executive Order 12580
9 which are relevant to this Agreement.

10
11 5.2 Naval Supply Center, Alameda Annex is a federal facility
12 under the jurisdiction of the Secretary of Defense within the
13 meaning of CERCLA section 120 and SARA section 211, and subject to
14 the Defense Environmental Restoration Program (DERP), 10 U.S.C.
15 section 2701, et seq.

16
17 5.3 For the purposes of this Agreement, the Department of the
18 Navy is the authorized delegate of the President under E.O. 12580
19 for receipt of notification by the State of its ARARs in the manner
20 set forth in CERCLA section 121(d)(2)(A)(ii), 42 U.S.C. section
21 9621(d)(2)(A)(ii) and the NCP.

22
23 5.4 The authority of the Navy to exercise the delegated
24 →removal authority of the President pursuant to CERCLA section 104,
25 42 U.S.C. section 9604, is not altered by this Agreement, except to
26 the extent that CERCLA section 120(a)(4) requires application of
27 state laws.

28
29 5.5 The actions to be taken pursuant to this Agreement are
30 reasonable and necessary to protect the public health, welfare, or
31 the environment.

32
33 5.6 There have been releases of hazardous substances,
34 pollutants or contaminants at or from the Federal Facility into the
35 environment within the meaning of section 25320 of the California
36 Health and Safety Code and the NCP, and discharges of waste within
37 the meaning of Division 7 of the California Water Code.

38
39 5.7 With respect to these releases, the Navy is an owner
40 and/or operator within the meaning of California Health and Safety
41 Code section 25323.5(a), and is a person within the meaning of
42 Division 7 of California Water Code, and California Health and
43 Safety Code section 25118.

44
45 5.8 Included as an Attachment to this Agreement is a map

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1 showing source(s) and areas of suspected and known contamination
2 based on information available at the time of the signing of this
3 Agreement.

4
5 5.9 In accordance with Section 300.600(b)(3) of the National
6 Contingency Plan, and Section 107(f) of CERCLA (42 U.S.C., §
7 9707(f)), the Secretary of Defense is the trustee for natural
8 resources located on, over, or under the Federal Facility, to the
9 extent such natural resources are not specifically entrusted to the
10 Secretary of Commerce or the Secretary of the Interior.

11
12
13 6. WORK TO BE PERFORMED

14
15 6.1 The Parties agree to perform the tasks, obligations and
16 responsibilities described in this Section in accordance with
17 applicable state and federal law and consistent, to the maximum
18 extent possible, with the priorities, guidelines, criteria, and
19 regulations in the NCP, and in accordance with all terms and
20 conditions of this Agreement including documents prepared and
21 incorporated in accordance with Section 7 (Review and Approval).

22
23 6.2 The Navy agrees to undertake, seek adequate funding for,
24 fully implement and report on the following tasks, with
25 participation of the Parties as set forth in this Agreement:

26
27 (a) Remedial Investigations of the Site;

28
29 (b) Feasibility Studies for the Site;

30
31 (c) All response actions for the Site;

32
33 (d) Operation and maintenance of response actions at the
34 Site.

35
36 (e) Federal and State Natural Resource Trustee
37 Notification and Coordination;

38
39 6.3 The Parties agree to:

40
41 (a) Make their best efforts to expedite the initiation
42 of response actions for the Site;

43
44 (b) Carry out all activities under this Agreement so as
45 to protect the public health, welfare and the environment.
46

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1 6.4 Upon request, the State agrees to provide any Party with
2 assistance in obtaining and interpreting guidance relevant to the
3 implementation of this Agreement.
4

5 6.5 In the event that any work required to be performed, or
6 any document required to be prepared, pursuant to this Agreement,
7 is to be performed or prepared by a contractor of the Navy (other
8 than an agency of the federal government), such work shall be
9 performed or document prepared, by or under the supervision of a
10 registered geologist licensed in the State of California, a
11 licensed professional engineer, or other licensed professional,
12 appropriate to the type of work or document required.
13

14 6.6 The Parties recognize that any discovered release of
15 hazardous substances determined to have originated either on or off
16 the site and to have been caused by a party other than the Navy,
17 including groundwater plumes commingled with plumes originating on
18 the site, may be addressed by a separate agreement between the
19 responsible parties and appropriate regulatory agencies. Nothing
20 in this section 6.6 shall reduce or otherwise affect the Navy's
21 obligations under this Agreement, except as specifically provided
22 in other agreements between such responsible parties and regulatory
23 agencies.
24

25 7. REVIEW AND APPROVAL
26

27 7.1 Applicability: The provisions of this Section establish
28 the procedures that shall be used by the Parties to provide each
29 other with appropriate technical support, notice, review, comment,
30 approval and response to comments regarding PA/SI, RI/FS, and RD/RA
31 documents, specified herein as either primary or secondary
32 documents. In accordance with CERCLA sections 120 and 121, DERP,
33 and the NCP, the Navy will be responsible for preparing and
34 distributing primary and secondary documents. As of the effective
35 date of this Agreement, all draft, draft final and final
36 deliverable documents identified herein shall be prepared,
37 distributed and subject to dispute in accordance with subsections
38 7.2 through 7.12 below. The designation of a document as "draft",
39 "draft final" or "final" is solely for purposes of review and
40 approval by the State in accordance with this Section. Such
41 designation does not affect the obligation of the Parties to issue
42 documents, which may be referred to herein as "final", to the
43 public for review and comment as appropriate and as required by
44 law.
45

46 7.2 General Process for PA/SI, RI/FS, and RD/RA documents:
47

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(a) Primary documents include those reports that are major, discrete, portions of PA/SI, RI/FS, and/or RD/RA activities. Primary documents are initially issued by the Navy in draft subject to review and approval by the State. Within sixty (60) days following receipt of comments on a particular draft primary document, the Navy will respond to the comments received and issue a draft final primary document subject to dispute resolution. The draft final primary document will become the final primary document either thirty (30) days after the receipt by the state of a draft final document if dispute resolution is not invoked or as modified by decision of the dispute resolution process.

(b) Secondary documents include those reports that are discrete portions of the primary documents and are typically input or feeder documents. Secondary documents are prepared by the Navy in draft subject to review and approval by the State. Although the Navy will respond to comments received, the draft secondary documents may be finalized in the context of the corresponding primary documents. A secondary document may be disputed at the time the corresponding draft final primary document is issued.

7.3 Primary Documents:

(a) The Navy shall complete and transmit drafts of the following primary documents for each operable unit and for the final remedy to the State, for review, comment and approval in accordance with the provisions of this Section; provided, however, that the Navy need not complete a draft primary document for an operable unit if (x) the same primary document completed or to be completed with respect to another operable unit covers all topics relevant to the operable unit at issue, and (y) the Parties agree in writing that such draft primary document need not be completed. The Parties may agree to merge or combine multiple documents if deemed appropriate and, if so, may adjust deadlines accordingly.

PA/SI

- (1) RI Reports
- (2) FS Reports
- (3) Proposed Plans

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(4) Remedial Action Plans (RAPs)/Records of
Decision (RODs)

(5) Remedial Designs (RDs)

(6) Remedial Action Work Plans, which may include
operation and maintenance plans

(7) Health and Safety Plans

(b) Only the final draft of primary documents shall be
subject to dispute resolution. The Navy shall complete and
transmit draft primary documents in accordance with the
timetable and deadlines established in Section 8 (Deadlines)
of this Agreement.

(c) Planning documents for primary documents shall
include target dates for subtasks, including those described
in subsections 7.4(b) and 18.3. The purpose of target dates
is to assist the Navy in meeting deadlines, but target dates
do not become enforceable by their inclusion in the primary
documents and are not subject to Section 8 (Deadlines),
Section 9 (Extensions) or Section 13 (Enforceability).

(d) If a draft primary document is prepared by a
contractor of the Navy (other than an agency of the federal
government), such contractor shall be a registered geologist
licensed in the State of California, a licensed professional
engineer, or other licensed professional, appropriate to the
type of work or document required.

(e) The draft Health and Safety Plan must be signed by
a Certified Industrial Hygienist who has adequate knowledge
of the control of occupational health hazards that arise as a
result of or during work.

7.4 Secondary Documents:

(a) The Navy shall complete and transmit drafts of the
following secondary documents for each operable unit and for
the final remedy to the State for review, comments, and
approval; provided, however, that the Navy need not complete
a draft secondary document for an operable unit if (x) the
same secondary document or a primary document completed or to
be completed with respect to another operable unit covers all
topics relevant to the operable unit at issue, and (y) the
Parties agree in writing that such draft secondary document

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need not be completed. The parties agree the secondary documents and their corresponding primary documents shall be as follows:

Secondary Document

Corresponding Primary Document

- | | | |
|------|---|-------|
| (1) | Sampling and Data Results | RI |
| (2) | Removal Action Reports (if generated) | RI |
| (3) | Baseline Risk Assessment | RI |
| (4) | Public Notices and Fact Sheets | FS/RD |
| (5) | Treatability Study (if generated) | FS |
| (6) | Initial Screening of Alternatives | FS |
| (7) | Detailed Analysis of Alternatives | FS |
| (8) | Remedial Action Schedules | RAP |
| (9) | Engineering Plans | RD |
| (10) | Post-Remedial Sampling Design Plan | RA |
| (11) | Post-Remedial Sampling Completion Report (if generated) | RA |
| (12) | Action Memorandum (if generated) | RI |

(b) Although the State may comment on the drafts for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by Subsection 7.2 hereof. Target dates for the completion and transmission of draft secondary documents shall be established by the Project Managers. The Project Managers also may agree upon additional secondary documents that are within the scope of the corresponding primary documents.

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1 7.5 California Environmental Quality Act (CEQA)
2

3 The Navy agrees to cooperate with and assist the State in complying
4 with the State's obligations under the California Environmental
5 Quality Act (CEQA) [Calif. Public Res. C. Sec. 21000, et seq.], as
6 applicable to the subject matter of this agreement. To this end,
7 the Parties shall consult and jointly prepare a CEQA coordination
8 plan as soon after the effective date of this agreement as is
9 reasonably possible. The State shall memorialize the plan and the
10 Navy shall furnish its concurrence in writing. The purpose of the
11 coordination plan will be to identify the issues, documents,
12 notices, hearings and time frames necessary for compliance with
13 CEQA and to develop a joint approach for integration of CEQA
14 procedures into the site remediation process. By agreeing to
15 assist the State in this manner, the Navy does not concede that
16 CEQA governs Navy activities on Naval Supply Center, Alameda Annex.
17 If compliance with CEQA requirements prevents the State from
18 fulfilling its obligations under this Agreement, the Parties shall
19 be excused from further compliance with the Agreement to the extent
20 that further participation by the State would put it in violation
21 of CEQA requirements, any disagreement arising under this
22 subsection shall be subject to dispute resolution.
23

24 7.6 Meetings of the Project Managers. (See also Subsection
25 18.3) The Project Managers shall meet in person approximately every
26 sixty (60) days, except as otherwise agreed by the Parties, to
27 review and discuss the progress of work being performed at the
28 Site, including progress on the primary and secondary documents.
29 However, progress meetings may be held more frequently as needed
30 upon agreement by all Project Managers. Prior to preparing any
31 draft document specified in subsections 7.3 and 7.4 above, the
32 Project Managers shall meet in an effort to reach a common
33 understanding with respect to the contents of the draft document.
34

35 7.7 Identification and Determination of Potential ARARs:
36

37 (a) The State lead agency will contact in writing those
38 State and local governmental agencies that are potential
39 sources of ARARs in a timely manner as set forth in NCP
40 section 300.515(d).
41

42 (b) Prior to the issuance of a draft primary or
43 secondary document for which ARAR determinations are
44 appropriate, the Project Managers shall meet to identify and
45 propose all potential pertinent ARARs, including any
46 permitting requirements that may be a source of ARARs. At
47 that time and within the time period described in NCP section

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1 300.515(h)(2), the State shall submit the ARARs obtained
2 pursuant to paragraph 7.7(a) to the Navy, along with a list of
3 agencies that failed to respond to the State's solicitation of
4 ARARs and copies of the solicitations and any related
5 correspondence.

6
7 (c) The Navy will contact the agencies that failed to
8 respond and again solicit their inputs.
9

10 (d) The Navy will prepare draft ARAR determinations in
11 accordance with CERCLA section 121(d)(2), 42 U.S.C.
12 section 9621(d)(2), and the NCP.
13

14 (e) In identifying potential ARARs, the Parties
15 recognize that actual ARARs can be identified only on a site-
16 specific basis and that ARARs depend on the specific hazardous
17 substances, pollutants and contaminants at a site, the
18 particular actions associated with a proposed remedy and the
19 characteristics of a site. The Parties recognize that ARAR
20 identification is necessarily an iterative process and that
21 potential ARARs must be identified and discussed among the
22 Parties as early as possible, and must be reexamined
23 throughout the RI/FS process until the final remedial action
24 is selected and approved.
25

26 7.8 Review and Comment on Draft Documents:
27

28 (a) The Navy shall complete and transmit each draft
29 primary document to the State on or before the corresponding
30 deadline established for the issuance of the document. The
31 Navy shall complete and transmit the draft secondary documents
32 in accordance with the target dates established for the
33 issuance of such documents.
34

35 (b) Unless the Parties mutually agree to another time
36 period, all draft documents shall be subject to a sixty (60)
37 day period for review, comment and approval by the State. At
38 or before the close of the comment period, the State shall
39 transmit its written comments to the Navy. Review of any
40 document by the State may extend to all aspects of it
41 (including completeness) and shall include, but not be limited
42 to, technical evaluation of any aspect of the document, and
43 conformance to applicable state law, consistency, to the
44 maximum extent possible, with the NCP and any pertinent
45 promulgated guidance or policy issued by the State and the
46 U.S. EPA. To expedite the review process, the Navy shall make
47 an oral presentation of each primary document to the Parties

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1 at the next scheduled meeting of the Project Managers
2 following transmittal of the draft document and shall do so
3 with respect to secondary documents if all other Project
4 Managers so request. Comments by the State shall be provided
5 with adequate specificity so that the Navy may respond to the
6 comment and, if appropriate, make changes to the draft
7 document. Comments shall refer to any pertinent sources of
8 authority or references upon which the comments are based and,
9 upon request of the Navy or the State, as appropriate, the
10 other party shall provide a copy of the cited authority or
11 reference. In cases involving complex and unusually lengthy
12 reports, the State may extend the sixty (60) day comment
13 period for an additional thirty (30) days by written notice to
14 the Navy prior to the end of the sixty (60) day period. On or
15 before the close of the comment period, the State shall
16 transmit its written comments to the Navy. In appropriate
17 circumstances, this time period may be further extended in
18 accordance with Section 9 (Extensions).
19

20 (c) Representatives of the Navy shall make themselves
21 readily available to the State during the comment period for
22 purposes of informally responding to questions and comments on
23 draft documents. Oral comments made during such discussions
24 need not be the subject of a written response by the Navy on
25 the close of the comment period.
26

27 (d) In commenting on a draft document which contains a
28 proposed ARAR determination, the State shall include a
29 reasoned statement of whether it objects to any portion of the
30 proposed ARAR determination. To the extent that the State
31 does object, it shall explain the basis for its objection in
32 detail and shall identify any ARARs which it believes were not
33 properly addressed in the proposed ARAR determination.
34

35 (e) Following the close of the comment period for a
36 draft document, the Navy shall give full consideration to all
37 written comments. If either party requests, within fifteen
38 (15) days following the close of the comment period on a draft
39 secondary document or draft primary document the Parties shall
40 hold a meeting to discuss all comments received. On a draft
41 secondary document the Navy shall, within sixty (60) days of
42 the close of the comment period, transmit to the State its
43 written response to the comments received. On a draft primary
44 document the Navy shall, within sixty (60) days of the close
45 of the comment period, transmit to the State a draft final
46 primary document, which shall include the Navy's response to
47 all written comments received within the comment period.

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1 While the resulting draft final document shall be the
2 responsibility of the Navy, it shall be the product of
3 consensus to the maximum extent possible.
4

5 (f) The Navy may extend the sixty (60) day periods for
6 responding to comments on a draft document and for issuing
7 the draft final primary document for an additional thirty (30)
8 days each by providing written notice to the State. In
9 appropriate circumstances, this time period may be further
10 extended in accordance with Section 9 (Extensions).
11

12 7.9 Availability of Dispute Resolution for Draft Final
13 Primary Documents:
14

15 (a) Dispute resolution shall be available to the Parties
16 for draft final primary documents as set forth in Section 12
17 (Dispute Resolution).
18

19 (b) When dispute resolution is invoked on a draft final
20 primary document, work may be stopped in accordance with the
21 procedures set forth in Subsection 12.10 regarding dispute
22 resolution.
23

24 7.10 Finalization of Documents: The draft final primary
25 document shall serve as the final primary document if no party
26 invokes dispute resolution regarding the document or, if invoked,
27 at completion of the dispute resolution process should the Navy's
28 position be sustained. If the Navy's determination is not
29 sustained in the dispute resolution process, the Navy shall
30 prepare, within no more than sixty (60) days after the close of the
31 dispute resolution process, a revision of the final draft document
32 which conforms to the results of dispute resolution. In
33 appropriate circumstances, the time period for this revision period
34 may be extended in accordance with Section 9 (Extensions).
35

36 7.11 Subsequent Modification of Final Documents: Following
37 finalization of any primary document pursuant to Subsection 7.10
38 above, any Party may seek to modify the document including seeking
39 additional field work, pilot studies, computer modeling or other
40 supporting technical work, only as provided in subparagraphs (a)
41 and (b) below. (These restrictions do not apply to the Community
42 Relations Plan/ Public Participation Plan.)
43

44 (a) Any Party may seek to modify a document after
45 finalization by submitting a concise written request to the
46 Project Managers of the other Parties. The request shall
47 specify the nature of the requested modification and how the

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request is appropriate under subsections 7.11(b)(1) and (2) below.

(b) In the event that a consensus is not reached by the Project Managers on the need for a modification, any Party may invoke dispute resolution to determine if such modification shall be conducted. Modification of a document shall be required only upon a showing that:

(1) The requested modification is based on information that is (a) new (i.e., information that becomes available or known after the document was finalized and (b) significant; and

(2) The requested modification could be of significant assistance in evaluating impacts on the public health or the environment, in providing an equally protective but less expensive technology, in evaluating the selection of remedial alternatives, or in protecting human health and the environment.

(c) Nothing in this Section shall alter the State's ability to request the performance of additional work which was not contemplated by this Agreement. The Navy's obligation to perform such work under this Agreement must be established by either a modification of a document or by amendments to this Agreement.

7.12 Finalization of Remedial Action Plans

For each OU and for the final remedy for the federal facility, the Navy shall be responsible for selection of the remedial action alternative and shall prepare a Remedial Action Plan (RAP) in accordance with California Health and Safety Code section 25356.1 for State approval. The State shall be responsible for circulating the RAP for public comment, furnishing appropriate notice, and conducting meetings or hearings. The Parties shall jointly consider public comments, incorporate appropriate changes, and issue the final RAP. Disputes concerning the RAP process will be subject to Section 12 (Dispute Resolution) of this Agreement.

7.13 If the State does not approve a document pursuant to this Section, and the Parties are not able to resolve their differences through the exhaustion of the dispute resolution process in Section 12, the Navy reserves any legal right it may have to proceed with the work described in this Agreement. The State reserves any legal

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1 right the State may have to prevent the Navy from proceeding with
2 the work described in this Agreement.

3
4 8. DEADLINES

5
6 8.1. All deadlines agreed upon before the effective date of
7 this Agreement shall be made an Appendix to this Agreement. To the
8 extent that deadlines have already been mutually agreed upon by the
9 Parties prior to the execution of this Agreement, they will satisfy
10 the requirements of this Section and remain in effect, accordance
11 with Subsection 8.2, and shall be incorporated into the appropriate
12 work plans.

13
14
15 8.2 Within twenty-one (21) days of the approval of the
16 Remedial Action Plan in accordance with section 25356.1 of the
17 California Health and Safety Code and consistent with the NCP to
18 the maximum extent possible, the Navy shall propose deadlines for
19 completion of the following draft primary documents:

20
21 (a) Remedial Designs

22
23 (b) Remedial Action Work Plans (to include operation and
24 maintenance plans, and schedules for RA)

25
26
27 8.3 Within fifteen (15) days of receipt of the proposed
28 deadlines, the State shall review and provide comments to the Navy.
29 Within fifteen (15) days following receipt of the comments the Navy
30 shall, as appropriate, make revisions and reissue the proposal.
31 The parties shall meet as necessary to discuss and finalize the
32 proposed deadlines. All agreed-upon deadlines shall be
33 incorporated into the appropriate work plans. If the parties fail
34 to agree within thirty (30) days on the proposed deadlines, the
35 matter shall immediately be submitted for dispute resolution
36 pursuant to Section 12 (Dispute Resolution). The final deadlines
37 established pursuant to this subsection shall be enforceable by the
38 State to the extent provided by the state and federal law, and
39 shall become an Appendix to this Agreement.

40
41 8.4 For any operable units not identified for RI/FS as of the
42 effective date of this Agreement, the Navy shall propose deadlines
43 for all documents listed in subsection 7.3(a)(1) through (11) (with
44 the exception of the Community Relations Plan/Public Participation
45 Plan and any document that comes within the proviso to such
46 subsection) within twenty-one (21) days of agreement on the
47 proposed operable unit by all Parties. These deadlines shall be

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1 proposed and finalized using the procedures set forth in
2 subsection 8.3.

3
4 8.5 The deadlines set forth in this Section, or to be
5 established as set forth in this Section, may be extended pursuant
6 to Section 9 (Extensions). The Parties recognize that one possible
7 basis for extension of the deadlines for completion of the Remedial
8 Investigation and Feasibility Study Reports is the identification
9 of significant new Site conditions during the performance of the
10 remedial investigation.

11
12
13
14
15 9. EXTENSIONS

16
17 9.1 Timetables, deadlines and schedules shall be extended
18 upon receipt of a timely request (if practicable, at least seven
19 (7) days prior to the due date) for extension and when good cause
20 exists for the requested extension. Any request for extension by
21 a Party shall be submitted to the other Parties in writing and
22 shall specify:

23
24 (a) The timetable, deadline or schedule that is sought
25 to be extended;

26
27 (b) The length of the extension sought;

28
29 (c) The good cause(s) for the extension; and

30
31 (d) The extent to which any related timetable and
32 deadline or schedule would be affected if the extension were
33 granted.

34
35 9.2 Good cause exists for an extension when sought in regard
36 to:

37
38 (a) An event of Force Majeure;

39
40 (b) A delay caused by another Party's failure to meet
41 any requirement of this Agreement;

42
43 (c) A delay caused by the good faith invocation of
44 dispute resolution or the initiation of judicial action;
45

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1 (d) A delay caused, or which is likely to be caused, by
2 an extension in regard to another timetable and deadline or
3 schedule;

4
5 (e) A delay caused by the need to respond to unusually
6 extensive public comments during a public comment period
7 required under state law or the NCP (including the parties'
8 agreement to perform additional work).

9
10 (f) Any work stoppage within the scope of Section 11
11 (Emergencies and Removals); or

12
13 (g) Any other event or series of events mutually agreed
14 to by the Parties as constituting good cause.

15
16 (h) A delay caused by increased security measures
17 resulting from upgrades in threat condition for combatting
18 terrorism on the Federal Facility;

19
20 (i) A delay caused or which is likely to be caused by
21 consultation requirements with regulatory agencies and Natural
22 Resources Trustees.

23
24 9.3 Absent agreement of the Parties with respect to the
25 existence of good cause, a Party may seek and obtain a
26 determination through the dispute resolution process that good
27 cause exists.

28
29 9.4 Within seven (7) days of receipt of a request for an
30 extension of a timetable, deadline or schedule, each receiving
31 Party shall advise the requesting Party in writing of the receiving
32 Party's position on the request. Any failure by a receiving Party
33 to respond within the 7-day period shall be deemed to constitute
34 concurrence with the request for extension. If a receiving Party
35 does not concur in the requested extension, it shall include in its
36 statement of nonconcurrence an explanation of the basis for its
37 position.

38
39 9.5 If there is consensus among all Parties that the
40 requested extension is warranted, the Navy shall extend the
41 affected timetable and deadline or schedule accordingly. If there
42 is no consensus among the Parties as to whether all or part of the
43 requested extension is warranted, the timetable and deadline or
44 schedule shall not be extended except in accordance with a
45 determination resulting from the dispute resolution process.

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1 9.6 Within seven (7) days of receipt of a statement of
2 nonconcurrence with the requested extension, the requesting Party
3 may invoke dispute resolution.

4
5 10. FORCE MAJEURE

6
7 10.1 A Force Majeure shall mean any event arising from causes
8 beyond the control of a Party that causes a delay in or prevents
9 the performance of any obligation under this Agreement, including,
10 but not limited to,

11 (a) acts of God;

12 (b) fire;

13 (c) war, or national conflict or emergency declared by
14 the President or Congress and affecting the Navy;

15 (d) insurrection;

16 (e) civil disturbance;

17 (f) explosion;

18 (g) unanticipated breakage or accident to machinery,
19 equipment or lines of pipe despite reasonably diligent
20 maintenance;

21 (h) adverse weather conditions that could not be
22 reasonably anticipated;

23 (i) unusual delay in transportation;

24 (j) restraint by court order or order of public
25 authority;

26 (k) inability to obtain, at reasonable cost and after
27 exercise of reasonable diligence, any necessary
28 authorizations, approvals, permits, or licenses due to action
29 or inaction of any governmental agency or authority other than
30 the Navy;

31 (l) delays caused by compliance with applicable statutes
32 or regulations governing contracting, procurement or
33 acquisition procedures, despite the exercise of reasonable
34 diligence; and

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1 (m) insufficient availability of appropriated funds which
2 have been diligently sought, or personnel reduction resulting
3 therefrom.
4

5 In order for Force Majeure based on insufficient funding to
6 apply to the Navy, the Navy under Subsection 10.1 (m) of this
7 Agreement, shall have made timely request for such funds as part of
8 the budgetary process as set forth in Section 15 (Funding). A Force
9 Majeure shall also include any strike or other labor dispute,
10 whether or not within the control of the Parties affected thereby.
11 Force Majeure shall not include increased costs or expenses of
12 Response Actions, whether or not anticipated at the time such
13 Response Actions were initiated, except to the extent that funding
14 has been diligently sought for increased costs whose cause could
15 not reasonably have been anticipated at the time the original cost
16 estimate was prepared. Upon request by the State the Navy shall
17 provide a complete explanation of all efforts undertaken to avoid
18 force majeure.
19

20 11. EMERGENCIES AND REMOVALS
21

22 11.1 Discovery and Notification.
23

24 If any Party discovers or becomes aware of an emergency or
25 other situation that may present an endangerment to public health,
26 welfare or the environment at or near the Site, which is related to
27 or may affect the work performed under this Agreement, that Party
28 shall immediately orally notify all other Parties and will follow-
29 up with written notification within seven (7) days. If the
30 emergency arises from activities conducted pursuant to this
31 Agreement, the Navy shall then take immediate action to notify the
32 appropriate State and local agencies and affected members of the
33 public.
34

35 11.2 Work Stoppage
36

37 In the event any Party determines that activities conducted
38 pursuant to this Agreement will cause or otherwise be threatened by
39 a situation described in Subsection 11.1, the Party may propose
40 the termination of such activities. If the Parties mutually agree,
41 the activities shall be stopped for such period of time as required
42 to abate the danger. In the absence of mutual agreement, the
43 activities shall be stopped in accordance with the proposal, and
44 the matter shall be immediately referred to the DTSC's Regional
45 Administrator for Region 2 for a work stoppage determination. Such
46 determination may be subject to the expedited dispute resolution

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1 process as provided in Section 12.14 (Expedited Dispute Resolution)
2 of this Agreement.

3
4 11.3 Removal Actions

5
6 (a) The provisions of this Section shall apply to all
7 removal actions as defined in CERCLA section 101(23), 42
8 U.S.C. § 9601(23) and Health and Safety Code section 25323,
9 including all modifications to, or extensions of, the ongoing
10 removal actions, and all new removal actions proposed or
11 commenced following the effective date of this Agreement.

12
13 (b) Any removal actions conducted at the Site shall be
14 subject to applicable state law and conducted in a manner
15 consistent with this Agreement, Executive Order 12580, CERCLA,
16 and to the maximum extent possible, the NCP.

17
18 (c) Except to the extent that CERCLA requires the
19 application of state laws, nothing in this Agreement shall
20 alter the Navy's authority with respect to removal actions
21 conducted pursuant to CERCLA, section 104 and DERP.

22
23 (d) Nothing in this Agreement shall alter any authority
24 the State may have with respect to removal actions conducted
25 at the Site.

26
27 (e) All reviews conducted by the State pursuant to 10
28 U.S.C. § 2705(b)(2) will be expedited so as not to unduly
29 jeopardize fiscal resources of the Navy for funding the
30 removal actions.

31
32 (f) If a Party determines that there may be an
33 endangerment to the public health or welfare or the
34 environment because of an actual or threatened release of a
35 hazardous substance, pollutant or contaminant at or from the
36 Site, the Party may request that the Navy take such response
37 actions as may be necessary to abate such danger or threat and
38 to protect the public health or welfare or the environment.
39 Any dispute arising out of this Subsection 11.3(f) may be
40 subject to the expedited dispute resolution as provided in
41 Subsection 12.14 of this Agreement.

42
43 11.4 Notice and Opportunity to Comment.

44
45 (a) The Navy shall provide the State with timely notice
46 and opportunity to review and comment upon any proposed
47 removal action for the Site, in accordance with 10 U.S.C. §

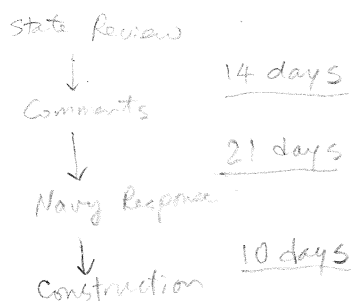
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2705(a) and (b). The Navy agrees to provide the information described below pursuant to such obligation.

(b) For emergency response actions, the Navy shall provide the State with notice in accordance with Subsection 11.1. Such oral notification shall, except in the case of extreme emergencies, include adequate information concerning the Site background, threat to the public health and welfare or the environment (including the need for response), proposed actions and costs (including a comparison of possible alternatives, means of transportation of any hazardous substances off-site, and proposed manner of disposal), expected change in the situation should no action be taken or should action be delayed (including associated environmental impacts), any important policy issues, and the Navy's recommendations. Within sixty (60) days of completion of the emergency action, the Navy will furnish the State with an Action Memorandum addressing the information provided in the oral notification, and any other information required pursuant to applicable state law for such actions.

(c) For other removal actions, the Navy will provide the State with a written Removal Work Plan which sets forth all information required by applicable state and federal law and required to be provided in accordance with Subsection 11.4(b). Removal Work Plan shall be prepared and reviewed in accordance with this section and shall not be subject to the general requirements for primary and secondary documents contained in Section 7 (Review and Approval). The Removal Work Plan shall be submitted to the State for review and comment at least forty-five (45) days before the response action is to begin. The State shall have two weeks from the date of receipt to review the Removal Work Plan and transmit comments or notice of concurrence to the Navy. Not less than ten (10) days before the response action is scheduled to begin, the Navy shall notify the State of the Navy's response to the State's comments concerning the Removal Work Plan. This response shall be subject to expedited dispute resolution in accordance with Section 12.14.

(d) All activities related to ongoing removal actions shall be reported by the Navy in the progress reports as described in Section 18 (Project Managers).



12. DISPUTE RESOLUTION

12.1 Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Section shall apply. Any party may invoke this dispute resolution procedure. All Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Section shall be implemented to resolve a dispute.

12.2 Within thirty (30) days after: (a) the receipt of a draft final primary document pursuant to Section 7 (Review and Approval), or (b) any action which leads to or generates a dispute, the disputing Party shall submit to the Dispute Resolution Committee (DRC) a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the technical, legal or factual information the disputing Party is relying upon to support its position.

12.3 Prior to any Party's issuance of a written statement of a dispute, the disputing Party shall engage the other Parties in informal dispute resolution among the Project Manager and/or their immediate supervisors. During this informal dispute resolution period the Parties shall meet as many times as are necessary to discuss and attempt resolution of the dispute.

12.4 The DRC will serve as a forum for resolution of dispute for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The Navy's designated member is the Facilities Management Director, WESTNAVFACENGCOM. The DTSC representative is the Chief of the Site Mitigation Branch, Region 2. The RWQCB representative is the Division Chief, San Francisco Bay Region. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Section 21 (Notification).

12.5 Following elevation of a dispute to the DRC, the DRC shall have twenty-one (21) days to unanimously resolve the dispute and issue a written decision. If the DRC is unable to unanimously resolve the dispute within this twenty-one (21) day period, the

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1 written statement of dispute shall be forwarded to the Senior
2 Executive Committee (SEC) for resolution within seven (7) days
3 after the close of the twenty-one (21) day resolution period.
4

5 12.6 The SEC will serve as the forum for resolution of
6 disputes for which agreement has not been reached by the DRC. The
7 Navy's representative on the SEC is the Commanding Officer,
8 WESTNAVFACENGCOM. DTSC representative on the SEC is the Regional
9 Administrator, Region 2. The RWQCB representative on the SEC is
10 the Executive Officer for San Francisco Bay Region.
11

12 12.7 If unanimous resolution of the dispute is not reached by
13 the SEC within twenty-one (21) days, the written statement of
14 dispute shall be immediately forwarded to (a) the Navy's
15 Secretariat representative, representing the Navy, (b) the Director
16 of the Department of Toxic Substances Control Program, and (c) the
17 Executive Officer for San Francisco Bay Region, representing RWQCB,
18 who shall confer, meet and exert their best efforts to resolve the
19 dispute within twenty-one (21) days after receipt of the written
20 statement of dispute.
21

22 12.8 In the event the dispute can not be resolved in
23 accordance with Section 12 of this Agreement, each Party reserves
24 its rights to take any action available to it under applicable
25 state and federal law.
26

27 12.9 The pendency of any dispute under this Section shall not
28 affect any Party's responsibility for timely performance of the
29 work required by this Agreement, except that the time period for
30 completion of work affected by such dispute shall be extended for
31 a period of time usually not to exceed the actual time taken to
32 resolve any good faith dispute in accordance with the procedures
33 specified herein. All elements of the work required by this
34 Agreement which are not affected by the dispute shall continue and
35 be completed in accordance with the applicable timetable and
36 deadline or schedule.
37

38 12.10 When dispute resolution is in progress, work affected
39 by the dispute will immediately be discontinued if the Regional
40 Administrator for the Department of Toxic Substances Control
41 requests, in writing, that work related to the dispute be stopped
42 because, in the State's opinion, such work is inadequate or
43 defective, and such inadequacy or defect is likely to yield an
44 adverse effect on human health or the environment, or is likely to
45 have a substantial adverse effect on the remedy selection or
46 implementation process. To the extent possible, the Party seeking
47 a work stoppage shall consult with the other Parties prior to

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1 initiating a work stoppage request. After work stoppage, if a
2 Party believes that the work stoppage is inappropriate or may have
3 potential significant adverse impacts, the Party may meet with the
4 other Parties to discuss the work stoppage. Following this
5 meeting, and further considerations of this issue the Regional
6 Administrator for the Department of Toxic Substances Control will
7 issue, in writing, a final decision with respect to the work
8 stoppage. The final written decision of the DTSC's Regional
9 Administrator may be subject to the expedited dispute resolution
10 process as provided in Section 12.14 of this Agreement.
11

12 12.11 Within twenty-one (21) days of resolution of a dispute
13 pursuant to the procedures specified in this Section, the Navy
14 shall incorporate the resolution and final determination into the
15 appropriate plan, schedule or procedures and proceed to implement
16 this Agreement according to the amended plan, schedule or
17 procedures.
18

19 12.12 Resolution of a dispute pursuant to this Section is a
20 final resolution. Except as otherwise provided in Sections 7.13
21 and 31 of this Agreement, all Parties shall abide by the final
22 resolution of the dispute.
23

24 12.13 For purposes of all dispute resolution procedures set
25 forth in this Agreement and other decisions of the Parties that may
26 be taken to dispute resolution, the Parties agree as follows:
27

28 (a) DTSC and RWQCB will jointly designate which of the
29 two agencies shall voice the State's position for specified
30 subjects and which shall do so for unspecified subjects. DTSC
31 and RWQCB shall provide the Navy with an initial designation
32 within thirty (30) days after the execution of this agreement.
33 DTSC and RWQCB may modify the initial designation or
34 subsequent designations. DTSC and RWQCB shall notify the Navy
35 in writing of any modification. Such modification shall
36 become effective upon receipt by the Navy.
37

38 (b) Although all Parties will participate in the
39 discussions throughout the dispute resolution process, the
40 agency designated in accordance with paragraph 12.13(a) shall
41 represent the State with a single position at the end of each
42 level of the dispute resolution process and in all decisions
43 of the Parties that may be taken to dispute resolution.
44

45 12.14 Expedited Dispute Resolution:
46

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1 (a) The following procedure shall apply whenever the
2 provisions of this Agreement call for expedited dispute
3 resolution.

4
5 (b) The dispute shall be submitted directly to the SEC.
6 The SEC shall have seven (7) days to unanimously resolve the
7 dispute. The SEC shall, within seven (7) days after the end
8 of the seven-day period, forward the unresolved dispute to the
9 Parties' representatives as specified in Subsection 12.7 above
10 for resolution. These representatives shall confer, meet and
11 exert their best efforts to resolve the dispute within seven
12 (7) days after receipt of the dispute.

13
14 (c) In the event the dispute cannot be resolved, each
15 Party reserves its rights under applicable state and federal
16 law.

17
18 13. ENFORCEABILITY

19
20 13.1 The Parties agree to exhaust their rights under
21 Section 12 (Dispute Resolution) prior to seeking judicial review.

22
23 13.2 The Parties agree that all Parties shall have the right
24 to enforce the terms of this Agreement in accordance with state and
25 federal law. The Parties do not intend, by entering into this
26 Agreement, to confer jurisdiction on each other when such
27 jurisdiction does not exist under applicable state and federal law.

28
29 14. CIVIL PENALTIES

30
31 14.1. In the event that the Navy fails to submit a primary
32 document listed in Section 7 (Review and Approval) to the State
33 pursuant to the appropriate timetable or deadline in accordance
34 with the requirements of this Agreement, or fails to comply with a
35 term or condition of this Agreement which relates to the final
36 remedial action, the State reserves its rights to seek civil
37 penalties against the Navy either administratively or judicially.
38 The Navy reserves its rights to contest any such civil penalties.

39
40 14.2. Upon determining that the Navy has failed in a manner
41 set forth in Subsection 14.1, above, the State shall so notify the
42 Navy in writing. If the failure in question is not already subject
43 to dispute resolution at the time such notice is received, the Navy
44 shall have fifteen (15) days after receipt of the notice to invoke
45 dispute resolution on the question of whether the failure did in
46 fact occur. The Navy shall not be liable for the civil penalty
47 sought by the State if the failure is determined, through the

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1 dispute resolution process, not to have occurred or to otherwise
2 have been excused under this Agreement. The State agrees not to
3 seek civil penalties or review of related issues either judicially
4 or administratively until the conclusion of the dispute resolution
5 process relating to the civil penalty issue.
6

7 14.3. This Section shall not affect the ability of the Navy
8 to obtain an extension of a timetable, deadline or schedule
9 pursuant to Section 9 (Extensions).
10

11 14.4. Nothing in this Agreement shall be construed to render
12 any officer or employee of the Navy personally liable for the
13 payment of any civil penalty assessed pursuant to this Section.
14

15 15. FUNDING
16

17 15.1 It is the expectation of the Parties to this Agreement
18 that all obligations of the Navy arising under this Agreement will
19 be fully funded. The Navy agrees to seek sufficient funding
20 through the DOD budgetary process to fulfill its obligations under
21 this Agreement.
22

23 15.2 The Navy shall include, in its submission to the
24 Department of Defense annual report to Congress, the specific cost
25 estimates and budgetary proposals associated with the
26 implementation of this Agreement.
27

28 15.3 Any requirement for the payment or obligation of funds,
29 including civil penalties under Section 14, or State oversight
30 costs under Section 33 of this Agreement, or under other terms of
31 this Agreement, shall be subject to the availability of
32 appropriated funds, and no provision herein shall be interpreted to
33 require obligation or payment of funds in violation of the
34 Anti-Deficiency Act, 31 U.S.C. § 1341, et seq. In cases where
35 payment or obligation of funds would constitute a violation of the
36 Anti-Deficiency Act, the dates established requiring the payment or
37 obligation of such funds shall be appropriately adjusted.
38

39 15.4 If appropriated funds are not available to fulfill the
40 Navy's obligations pursuant to this Agreement under circumstances
41 not amounting to Force Majeure, the State reserves the right,
42 subject to dispute resolution, to enforce this agreement through
43 any appropriate means, to initiate an action against any other
44 person, or to take any response action, which would be appropriate
45 absent this Agreement.
46

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1 15.5 Funds authorized and appropriated annually by Congress
2 under the "Environmental Restoration, Defense" appropriation in the
3 Department of Defense Appropriation Act and allocated by the Deputy
4 Assistant Secretary of Defense for Environment to the Department of
5 the Navy will be the source of funds for activities required by
6 this Agreement consistent with section 211 of SARA, 10 U.S.C.
7 However, should the Environmental Restoration, Defense
8 appropriation be inadequate in any year to meet the total
9 Department of the Navy CERCLA implementation requirements, the
10 Department of Defense shall employ and the Department of the Navy
11 shall follow a standardized Department of Defense prioritization
12 process which allocates that year's DERA appropriations in a manner
13 which maximizes the protection of human health and the environment.
14 A standardized Department of Defense prioritization model shall be
15 developed and utilized with the assistance of U.S. EPA and the
16 states.

17
18 16. EXEMPTIONS
19

20 16.1 The obligation of the Navy to comply with the provisions
21 of this Agreement may be relieved by:

22
23 (a) A Presidential order of exemption issued pursuant to
24 the provisions of CERCLA section 120(j)(1), 42 U.S.C. section
25 9620(j)(1), or RCRA section 6001, 42 U.S.C. section 6961; or
26

27 (b) The order of an appropriate court.
28

29 16.2 The State reserves any statutory right it may have to
30 challenge any order relieving the Navy of its obligations to
31 comply with this Agreement.
32

33 17. STATUTORY COMPLIANCE AND CORRECTIVE ACTION
34

35 17.1 The Parties intend to integrate into this comprehensive
36 Agreement the Navy's CERCLA response obligations with the Navy's
37 (a) RCRA corrective action obligations to the extent possible, (b)
38 State corrective/remedial action obligations, and (c) obligations
39 under all Orders and other statutory requirements of RWQCB, in each
40 case relating to releases of hazardous substances, hazardous
41 wastes, wastes (only to the extent that the definition of waste in
42 Water Code Section 13050 covers hazardous substances, pollutants,
43 contaminants, and hazardous wastes), pollutants or contaminants
44 covered by this Agreement, and which have been or will be
45 adequately addressed by the remedial actions provided for under
46 this Agreement. Therefore, the Parties intend that any remedial
47 action selected, implemented and completed under this Agreement

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1 will be protective of human health and the environment such that
2 remediation of releases covered by this Agreement shall obviate the
3 need for further corrective action under Chapter 6.5 of the
4 California Health and Safety Code, federal RCRA (to the extent
5 possible), and otherwise applicable state water quality protection
6 laws. (i.e., no further corrective action shall be required). The
7 Parties agree that with respect to releases of hazardous waste
8 covered by this Agreement, such state laws shall be considered
9 applicable or relevant and appropriate requirements pursuant to
10 CERCLA section 121.
11

12 17.2 The Parties recognize that the requirement to obtain
13 permits for response actions undertaken pursuant to this Agreement
14 shall be as provided for in section 25358.9 of the California
15 Health and Safety Code and Section 19 of this Agreement. The
16 Parties further recognize that on-going hazardous waste management
17 activities at Naval Supply Center, Alameda Annex may require the
18 issuance of permits under federal and state laws. This Agreement
19 does not affect the requirements, if any, to obtain such permits.
20 However, if a permit is issued to the Navy for ongoing hazardous
21 waste management activities at the Site, the issuing party shall
22 reference and incorporate in a permit condition any appropriate
23 provision, including appropriate schedules (and the provision for
24 extension of such schedules), of this Agreement into such permit.
25 The Parties intend that any judicial review of any corrective
26 action, closure or other remediation activities mandated under
27 RCRA, to the extent possible, or State hazardous waste or water
28 quality permitting laws which have been subjugated to this
29 Agreement in accordance with this section shall, to the extent
30 authorized by law, only be reviewed under the applicable provisions
31 of state hazardous substance and water quality laws, and CERCLA.
32
33

34 18. PROJECT MANAGERS
35

36 18.1 Within ten (10) days after the effective date of this
37 Agreement, the Navy, and the State shall each designate a Project
38 Manager and an alternate (each hereinafter referred to as Project
39 Manager), for the purpose of overseeing the implementation of this
40 agreement. The Project Managers shall be responsible on a daily
41 basis for assuring proper implementation of the RI/FS and the RD/RA
42 in accordance with the terms of the Agreement. In addition to the
43 formal notice provisions set forth in Section 21 (Notification), to
44 the maximum extent possible, communications among the Navy, and the
45 State on all documents, including reports, comments, and other
46 correspondence concerning the activities performed pursuant to this
47 Agreement, shall be directed through the Project Managers. A

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1 contractor may not serve as Project Manager, unless all other
2 Parties consent in writing.

3
4 18.2 The Navy and the State may change their respective
5 Project Managers. The other Party shall be notified in writing
6 within five days of the change.

7
8 18.3 The Project Managers shall meet to discuss progress as
9 described in Subsection 7.6. Although the Navy has ultimate
10 responsibility for meeting its respective deadlines or schedule,
11 the Project Managers shall assist in this effort by consolidating
12 the review of primary and secondary documents whenever possible,
13 and by scheduling progress meetings to review reports, evaluate the
14 performance of environmental monitoring at the Site, review RI/FS
15 or RD/RA progress, discuss target dates for elements of the RI/FS,
16 resolve disputes, and adjust deadlines or schedules. At least one
17 week prior to each scheduled progress meeting, the Navy will
18 provide to the other Parties a draft agenda and summary of the
19 status of the work subject to this Agreement. The Navy Project
20 Manager shall be responsible for preparation of minutes of all
21 meetings and shall furnish copies on a timely basis to the other
22 Project Manager(s). Unless the Project Managers agree otherwise,
23 the minutes of each progress meeting, with the meeting agenda and
24 all documents discussed during the meeting (which were not
25 previously provided) as attachments, shall constitute a progress
26 report. The Navy will send to all Project Managers (a) within ten
27 business days after the meeting all such documents not previously
28 provided and (b) within twenty-one (21) calendar days after the
29 meeting, the minutes and agenda. The other Parties will have five
30 (5) business days to submit comments to the Navy. If no comments
31 are received by the Navy, the minutes shall become final. Unless
32 otherwise agreed to by all the Project Managers, the Navy is
33 responsible for supplying monthly progress reports to the other
34 Parties on activities covered under this Agreement. These monthly
35 progress report shall include the information that would normally
36 be discussed in a progress meeting of the Project Managers. Other
37 meetings shall be held more frequently upon agreement by all
38 Project Managers.

39
40 18.4 The authority of the Project Managers shall include, but
41 is not limited to:

42
43 (a) Taking samples and ensuring that sampling and other
44 field work is performed in accordance with the terms of any
45 final work plan and QAPP;
46

Agenda

one week
prior

minutes
in 2 days

5 days comm

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1 (b) Observing, and taking photographs and making such
2 other reports on the progress of the work as the Project
3 Managers deem appropriate, subject to the limitations set
4 forth in Section 25 (Access to Federal Facility) hereof;
5

6 (c) Reviewing records, files and documents relevant to
7 the work performed, subject to the limitations set forth in
8 subsection 23.1 hereof.
9

10 (d) Determining the form and specific content of the
11 Project Manager meetings and of progress reports based on such
12 meetings; and
13

14 (e) Recommending and requesting minor field
15 modifications to the work to be performed pursuant to a final
16 work plan, or in techniques, procedures, or design utilized in
17 carrying out such work plan.
18

19 18.5 The Navy may initiate necessary minor field
20 modifications provided that the other Project Managers are notified
21 in a timely manner. Any other field modification proposed by any
22 Party pursuant to this Section must be approved orally by all
23 Parties' Project Managers to be effective. The Navy Project
24 Manager will make a contemporaneous record of such modification and
25 approval in a written log, and a copy of the log entry will be
26 provided as part of the next progress report. Even after approval
27 of the proposed modification, no Project Manager will require
28 implementation by a government contractor without approval of the
29 appropriate Government Contracting Officer. *approved orally*
30

31 18.6 The Project Manager for the Navy shall be responsible
32 for day-to-day field activities at the Site. The Navy Project
33 Manager or other designated representative of Naval Supply Center,
34 Alameda Annex shall be present at the Site or reasonably available
35 to supervise work during all hours of work performed at the Site
36 pursuant to this Agreement. For all times that such work is being
37 performed, the Navy Project Manager shall inform the Environmental
38 Manager, Installation Services Department Naval Supply Center,
39 Alameda Annex of the name and telephone number of the designated
40 representative responsible for supervising the work. ?
41

42 18.7 The Project Managers shall be reasonably available to
43 consult on work performed pursuant to this Agreement and shall make
44 themselves available to each other for the pendency of this
45 Agreement. The absence of the State or Navy Project Managers from
46 the facility shall not be cause for work stoppage of activities
47 taken under this Agreement.

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1 19. PERMITS

2
3 19.1 The Parties recognize that, under sections 121(d) and
4 121(e)(1) of CERCLA, 42 U.S.C. section 9621(d) and 9621(e)(1), and
5 the NCP, portions of the response actions called for by this
6 Agreement and conducted entirely on-site are exempted from the
7 procedural requirement to obtain a federal, state, or local permit
8 but must satisfy all the promulgated (as defined in NCP section
9 300.400(g)(4)) applicable or relevant and appropriate federal and
10 State substantive standards, requirements, criteria, or limitations
11 which would have been included in any such permit.
12

13 19.2 This section is not intended to relieve the Navy from
14 any applicable regulatory requirements, including obtaining a
15 permit, whenever it proposes a response action involving either the
16 movement of hazardous substances, pollutants, or contaminants off-
17 site, or the conduct of a response action off-site.
18

19 19.3 The Navy shall notify the State in writing of any permit
20 required for off-site activities as soon as it becomes aware of the
21 requirement. The Navy agrees to obtain any permits necessary for
22 the performance of any work under this Agreement. Upon request,
23 the Navy shall provide the State copies of all such permit
24 applications and other documents related to the permit process.
25 Copies of permits obtained in implementing this Agreement shall be
26 appended to the appropriate submittal or progress report. Upon
27 request by the Navy Project Manager, the Project Managers of the
28 State will assist the Navy to the extent feasible in obtaining any
29 required permit.
30

31 20. QUALITY ASSURANCE

32
33 20.1 In order to provide quality assurance and maintain
34 quality control regarding all field work and sample collection
35 performed pursuant to this Agreement, the Navy agrees to designate
36 a Quality Assurance Officer (QAO) who will ensure that all work is
37 performed in accordance with approved work plans, sampling plans
38 and QAPPs. The QAO shall maintain for inspection a log of quality
39 assurance field activities and provide a copy to the Parties upon
40 request. A contractor may serve as QAO for the Navy.
41

42 20.2 All laboratories performing analysis on behalf of the
43 Navy pursuant to this Agreement shall be California state certified
44 or U.S. EPA certified laboratories for hazardous waste.
45
46

47 21. NOTIFICATION

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1 21.1 All Parties shall transmit primary and secondary
2 documents, and comments thereon, and all notices required herein by
3 next day mail, hand delivery, or facsimile (and followed by an
4 original by first-class mail), or by certified mail if transmitted
5 sufficiently ahead of the applicable deadline. Notifications shall
6 be deemed effective upon receipt.
7

8 21.2 Notice to the individual Parties pursuant to this
9 Agreement shall be sent to the addresses specified by the Parties.
10 Initially these shall be as follows:
11
12
13

14 Virginia Lasky, Project Manager
15 Federal Facility Unit
16 California Department of Toxic Substances Control
17 Site Mitigation Branch
18 700 Heinz Street, Building F
19 Berekeley, CA 94710
20
21

22 Janette Baxter, Project Manager
23 California Regional Water Quality Control Board
24 San Francisco Region
25 2101 Webster Street, Suite 500
26 Oakland, CA 94612
27
28

29 Ernie Galang, Project Manager
30 Department of the Navy
31 Western Division
32 Naval Facilities Engineering Command
33 900 Commodore
34 San Bruno, CA 94066-0720
35

36 21.3 All routine correspondence may be sent via first class
37 mail to the above addressees.
38

39 22. DATA AND DOCUMENT AVAILABILITY
40

41 22.1 Each Party shall make all sampling results, test
42 results or other data or documents generated through the
43 implementation of this Agreement available to the other Parties.
44 All quality assured data shall be supplied within one hundred and
45 twenty (120) days of its collection, unless its corresponding draft
46 document deadline is scheduled sooner pursuant to Section 8 of this
47 Agreement, in which case the quality assured data shall be supplied

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1 with the corresponding draft document. The Navy shall make its best
2 efforts to supply the quality assured data within ninety (90) days
3 after its collection. The procedures of Section 9 (Extensions)
4 shall apply to the one hundred and twenty (120) day period referred
5 to herein.
6

7 22.2 The sampling Party's Project Manager shall notify the
8 other Parties' Project Managers not less than ten (10) days in
9 advance of any sample collection. If it is not possible to provide
10 ten (10) days prior notification, the sampling Party's Project
11 Manager shall notify the other Project Managers as soon as possible
12 after becoming aware that samples will be collected. Each Party
13 shall allow, to the extent practicable, split or duplicate samples
14 to be taken by the other Parties or their authorized
15 representatives. Other Parties desiring to collect split or
16 duplicate samples shall inform the sampling Party before the time
17 of sample collection. Each Party receiving split or duplicate
18 samples shall on request provide the sampling Party with its chain
19 of custody documents relating to such sample.
20

21 23. RELEASE OF RECORDS
22

23 23.1 The Parties may request of one another access to or a
24 copy of any record or document relating to this Agreement, or upon
25 the requesting party's demonstration of the need to know, any other
26 remediation activities conducted at the site. If the Party that is
27 the subject of the request (the originating Party) has the record
28 or document, that Party shall provide access to or a copy of the
29 record or document; provided, however, that no access to or copies
30 of records or documents need be provided if they are subject to
31 claims of confidentiality because of attorney-client privilege,
32 attorney work product, deliberative process, enforcement
33 confidentiality, the Federal Privacy Act, or properly classified
34 for national security under law or executive order.
35

36 23.2 Records or documents identified by the originating
37 Party as confidential pursuant to (a) non-disclosure provisions of
38 the Freedom of Information Act, 5 U.S.C. § 552, other than those
39 listed in subsection 23.1 above, or (b) the California Public
40 Records Act, section 6250, et.seq. of the California Government
41 Code, shall be released to the requesting Party, provided the
42 requesting Party states in writing that it will not release the
43 record or document to the public without prior approval of the
44 originating Party or, if the originating Party does not approve,
45 giving that Party the opportunity to contest any preliminary
46 decision to release a document, in accordance with applicable
47 statutes and regulations. Records or documents which are provided

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1 to the requesting Party and which are not identified as
2 confidential may be made available to the public without further
3 notice to the originating Party.

4
5 23.3 The Parties will not assert one of the above
6 exemptions, including any available under the Freedom of
7 Information Act or California Public Records Act, even if
8 available, if no governmental interest would be jeopardized by
9 access or release as determined solely by the Party who could
10 assert the privilege.

11
12 23.4 Subject to CERCLA section 120(j)(2), any documents
13 required to be provided by Section 7 (Review and Approval), and
14 analytical data showing test results will not be subject to
15 subsection 23.2 or the proviso to subsection 23.1.

16
17 23.5 This Section does not change any requirement regarding
18 press releases in Section 26 (Public Participation).

19
20 23.6 A determination not to release a document for one of
21 the reasons specified above shall not be subject to Section 12
22 (Dispute Resolution). Any Party objecting to another Party's
23 determination may pursue the objection through the determining
24 Party's appeal procedures, concerning releasability of documents.

25
26 24. PRESERVATION OF RECORDS

27
28 24.1 Despite any document retention policy to the contrary,
29 the Parties shall preserve, during the pendency of this Agreement
30 and for a minimum of ten years after its termination, all records
31 and documents contained in the Administrative Record and any
32 additional records and documents retained in the ordinary course of
33 business which relate to the actions carried out pursuant to this
34 Agreement. After this ten year period, each Party shall notify the
35 other Parties at least forty-five (45) days prior to destruction of
36 any such documents. Upon request by any Party, the requested Party
37 shall make available such records or copies of any such records,
38 unless withholding is authorized and determined appropriate by law.

39
40 25. ACCESS TO FEDERAL FACILITY

41
42 25.1 Without limitations on any authority conferred on the
43 State by statute or regulation, the State or its authorized
44 representatives, shall be allowed to enter Naval Supply Center,
45 Alameda Annex at reasonable times for purposes consistent with the
46 provisions of the Agreement, subject to any statutory and
47 regulatory requirements necessary to protect national security or

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1 mission essential activities. Such access shall include, but not
2 be limited to, reviewing the progress of the Navy in carrying out
3 the terms of this Agreement; ascertaining that the work performed
4 pursuant to this Agreement is in accordance with approved work
5 plans, sampling plans and QAPPs; and conducting such tests as the
6 State, represented by the Project Manager(s), deems necessary.
7

8 25.2 The Navy shall honor all reasonable requests for access
9 by the State, conditioned upon presentation of proper credentials.
10 The Navy Project Manager or his/her designee will provide briefing
11 information, coordinate access and escort to restricted or
12 controlled-access areas, arrange for base passes and coordinate any
13 other access requests which arise.
14

15 25.3 The State shall provide reasonable notice (which shall,
16 if practical, be Seventy-two (72) hours advance notice) to the Navy
17 Project Manager to request any necessary escorts. When
18 circumstances require the State to give less than seventy-two (72)
19 hours advance notice, the Navy shall make a reasonable effort to
20 provide the necessary escorts as quickly as possible. The State
21 shall not use any camera, sound recording or other recording device
22 at Naval Supply Center, Alameda Annex without the appropriate
23 permission. The Navy shall not unreasonably withhold such
24 permission.
25

26 25.4 State access granted in Subsection 25.1 of this
27 Section, shall be subject to those regulations necessary to protect
28 national security or mission essential activities. Such regulation
29 shall not be applied so as to unreasonably hinder the State from
30 carrying out its responsibilities and authority pursuant to this
31 Agreement. In the event that access requested by the State is
32 denied by the Navy, the Navy shall provide an explanation within 48
33 hours of the reason for the denial, including reference to the
34 applicable regulations, and, upon request, a copy of such
35 regulations. The Navy shall expeditiously make alternative
36 arrangements for accommodating the requested access. The Parties
37 agree that this Agreement is subject to CERCLA section 120(j),
38 regarding the issuance of Site Specific Presidential Orders as may
39 be necessary to protect national security.
40

41 25.5 If the State requests access in order to observe a
42 sampling event or other work being conducted pursuant to this
43 Agreement, and access is denied or limited, the Navy agrees to
44 reschedule or postpone such sampling or work if the State so
45 requests, until such mutually agreeable time when the requested
46 access is allowed. The Navy shall not restrict the access rights
47 of the State to any greater extent than the Navy restricts the

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1 access rights of its contractors performing work pursuant to this
2 Agreement.

3
4 25.6 All Parties with access to Naval Supply Center, Alameda
5 Annex pursuant to this Section shall comply with all applicable
6 health and safety plans.

7
8 25.7. To the extent the activities pursuant to this Agreement
9 must be carried out on other than Navy property, the Navy shall use
10 its best efforts to obtain access agreements from the owners which
11 shall provide reasonable access for the Navy and the State and its
12 representatives. The Navy may request the assistance of the State
13 in obtaining such access, and upon such request, the State will use
14 its best efforts to obtain the required access. In the event that
15 the Navy is unable to obtain such access agreements, the Navy shall
16 promptly notify the State.

17
18 25.8 With respect to non-Navy property on which monitoring
19 wells, pumping wells, or other response actions are to be
20 located, the Navy shall use its best efforts to ensure that any
21 access agreements shall provide for the continued right of entry
22 for all Parties for the performance of such remedial activities.
23 In addition, any access agreement shall provide that no conveyance
24 of title, easement, or other interest in the property shall be
25 consummated without the continued right of entry.

26
27 25.9 Nothing in this Section shall be construed to limit the
28 State's full right of access as provided in California Health and
29 Safety Code section 25185, except as that right may be limited by
30 applicable national security regulations, or state or federal law.

31
32 26. PUBLIC PARTICIPATION

33
34 26.1 The Parties agree that any proposed removal actions and
35 remedial action alternative(s) and plan(s) for remedial action at
36 the Site arising out of this Agreement shall comply with the
37 administrative record and public participation requirements of
38 applicable state and federal law and relevant community relations
39 provisions in the NCP. The State agrees to inform the Navy of all
40 State requirements which it determines to pertain to public
41 participation. The provisions of this Section shall be carried out
42 in a manner consistent with, and shall fulfill the intent of,
43 Section 17 (Statutory Compliance and Corrective Action).

44
45 26.2 The Navy shall develop and implement a Public
46 Participation Plan/Community Relations Plan addressing the site
47 remediation activities and elements of work undertaken by the Navy,

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1 except for those phases of work where the NCP does not require a
2 Public Participation Plan/Community Relations Plan for the
3 particular work to be performed.
4

5 26.3 The Navy shall establish and maintain an administrative
6 record at a place, at or near the federal facility, which is freely
7 accessible to the public, which record shall provide the
8 documentation supporting the selection of each response action. The
9 administrative record shall be established and maintained in
10 accordance with relevant provisions of state and federal law. A
11 copy of each document placed in the administrative record, not
12 already provided, will be provided by the Navy to the other
13 Parties. The administrative record developed by the Navy shall be
14 updated and new documents supplied to the other Parties on at least
15 a quarterly basis. An index of documents in the administrative
16 record will accompany each update of the administrative record.
17

18 26.4 Except in an emergency, any Party issuing a press
19 release with reference to any of the work required by this
20 Agreement shall advise the other Parties of such press release or
21 fact sheet and the contents thereof, at least forty-eight (48)
22 hours prior to issuance.
23

24 27. FIVE YEAR REVIEW
25

26 27.1 Consistent with CERCLA section 121(c) and in accordance
27 with this Agreement, if the selected remedial action results in any
28 hazardous substances, pollutants or contaminants remaining at the
29 Site, the Navy shall review the remedial action program at least
30 every five (5) years after the initiation of the final remedial
31 action to assure that human health and the environment are being
32 protected by the remedial action being implemented.
33

34 27.2 Copies of all documents generated by the five year
35 review shall be made available to all other Parties in accordance
36 with Section 21 of this Agreement. If, upon such review, any of
37 the Parties proposes additional work or modification of work, such
38 proposal shall be handled under Subsection 7. 11 of this Agreement.
39

40 27.3 To synchronize the five-year reviews for all operable
41 units and final remedial actions, the following procedure will be
42 used: Review of operable units by the Navy will be conducted every
43 five years counting from the initiation of the first operable unit,
44 until initiation of the final remedial action for the Site. At
45 that time, a separate review for all operable units shall be
46 conducted. Review of the final remedial action by the Navy

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1 (including all operable units) shall be conducted every five years
2 thereafter.

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4
5
6 28. TRANSFER OF REAL PROPERTY
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8 28.1 The Navy shall not transfer any real property comprising
9 the federal facility except in compliance with section 120(h) of
10 CERCLA, 42 U.S.C. § 9620(h) and 40 CFR Part 373. Prior to any sale
11 of any portion of the land comprising the federal facility which
12 includes an area within which any release of hazardous substance
13 has come to be located, the Navy shall give written notice of that
14 condition to the buyer of the land. At least thirty (30) days
15 prior to any conveyance subject to section 120(h) of CERCLA, the
16 Navy shall notify all Parties of the transfer of any real property
17 subject to this Agreement and the provisions made for any
18 additional remedial actions, if required. The provisions of this
19 Subsection shall not apply to the extent federal statutes adopted
20 after the effective date of this Agreement place restrictions on
21 transfer of real property by the Navy that are inconsistent with
22 such provisions.
23

24 29. AMENDMENT OR MODIFICATION OF AGREEMENT
25
26

27 29.1 This Agreement can be amended or modified solely upon
28 written consent of all Parties. Such amendments or modifications
29 may be proposed by any Party and shall be effective the third
30 business day following the day the last Party signing the amendment
31 or modification sends its notification of signing to the other
32 Parties. The Parties may agree to a different effective date.
33

34 30. TERMINATION OF THE AGREEMENT
35
36

37 30.1 The provisions of this Agreement shall be deemed
38 satisfied and terminated upon receipt by the Navy of written notice
39 from the State, that the Navy has demonstrated that all the terms
40 of this Agreement have been completed. If the State denies the
41 request for termination, the State shall provide a written
42 statement of the basis for its denial and describe the Navy actions
43 which, in the view of the State, would be a satisfactory basis for
44 granting a notice of completion. Such denial or failure to grant
45 the request for termination shall be subject to dispute resolution.
46 If the State fails to either grant or deny the request for
47 termination, or fails to provide a written statement for the basis

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1 for its denial, within one hundred eighty (180) days of receipt of
2 the request, the request for termination shall be deemed granted.
3
4
5

6 30.2 This provision shall not affect the requirements for
7 periodic review at maximum five (5) year intervals of the efficacy
8 of the remedial actions.
9
10
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12
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17

18 31. COVENANT NOT TO SUE AND RESERVATION OF RIGHTS
19

20 31.1 In consideration for the Navy's compliance with this
21 Agreement, and based on the information known to the Parties or
22 reasonably available on the effective date of this Agreement, the
23 Navy and the State agree that full compliance with this Agreement
24 shall stand in lieu of any administrative, legal, and equitable
25 remedies against the Navy available to the State regarding the
26 releases or threatened releases of hazardous substances including
27 hazardous wastes, pollutants or contaminants at the Site which are
28 the subject of any RI/FS conducted pursuant to this Agreement and
29 which have been or will be adequately addressed by the remedial
30 actions provided for under this Agreement.
31

32 31.2 Notwithstanding this Section, the State shall, subject
33 to the provisions of Section 12 (Dispute Resolution), retain any
34 right it may have under applicable state or federal law to obtain
35 judicial review of any matter related to compliance with, or
36 performance of this agreement.
37

38 31.3 When any dispute remains unresolved at the conclusion of
39 the dispute resolution process, this Agreement shall not be
40 interpreted as precluding any Party from exercising whatever rights
41 it may have to proceed with the disputed work, including the right
42 to select and implement appropriate remedial actions at the site.
43

44 32. OTHER CLAIMS
45

46 32.1 Nothing in this Agreement shall constitute or be
47 construed as a bar or release from any claim, cause of action or

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1 demand in law or equity by or against any person, firm, partnership
2 or corporation not a signatory to this Agreement for any liability
3 it may have arising out of or relating in any way to the
4 generation, storage, treatment, handling, transportation, release,
5 or disposal of any hazardous substances, hazardous waste, wastes,
6 pollutants, or contaminants found at, taken to, or taken from the
7 federal property. Unless specifically agreed to in writing by the
8 Parties, the State shall not be held as a party to any contract
9 entered into by the Navy to implement the requirements of this
10 Agreement.

11
12 32.2 This Agreement shall not restrict any Party from taking
13 any legal or response action for any matter which is not part of
14 the subject matter of this Agreement.

15
16
17
18 33. STATE SUPPORT SERVICES AND STATE OVERSIGHT COSTS

19
20 33.1 Compensation for State support services rendered in
21 connection with those activities funded by the Defense
22 Environmental Restoration Program (10 U.S.C. §2701, et seq.)
23 carried out pursuant to this Agreement are governed by the
24 Defense/State Memorandum of Agreement (DSMOA), executed on May 31,
25 1990, between DTSC on behalf of the State and the Department of
26 Defense.

27
28 33.2 In the event that the DSMOA is terminated or no longer
29 in effect for any reason, and until a new DSMOA takes effect, the
30 parties agree to the provisions of this subsection and the
31 remainder of Section 33. The Navy agrees to request funding,
32 subject to Section 15 (Funding), and agrees to reimburse the State,
33 subject to the conditions and limitations set forth in this
34 Section, for all reasonable costs the State incurs in providing
35 services in support of the Navy's activities conducted pursuant to
36 this Agreement at the Site. The Navy shall provide upon request
37 all necessary information to the State concerning the funding
38 sources and amounts for all activities conducted by the Navy in the
39 performance of this Agreement. In the event that certain
40 activities carried out under this Agreement appear to be ineligible
41 for DERA funds as determined by DOD and Navy policy, the Navy shall
42 promptly notify the State in accordance with Section 21
43 (Notifications).

44
45 33.3 Total compensation to the State for services or
46 oversight activities shall not exceed the percentage limit
47 specified in the DSMOA and the most recent Cooperative Agreement,

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1 using the same procedures set forth in those documents. If no
2 Cooperative Agreement is in effect, the State may withdraw from
3 this Agreement or otherwise take any actions authorized by
4 subsection 15.4 of this Agreement.

5
6 33.4 Within one-hundred twenty (120) days after the end of
7 each quarter of the federal fiscal year, the State shall submit to
8 the Navy an accounting of all State costs actually incurred during
9 that quarter in providing support services under this Section.
10 Such accounting shall be accompanied by cost summaries and be
11 supported by documentation which meets federal auditing
12 requirements. The summaries will set forth employee-hours and
13 other expenses by major type of support service. All costs
14 submitted must be for work directly related to implementation of
15 this Agreement and not inconsistent with the NCP and the
16 requirements described in OMB Circulars A-87 (Cost Principles for
17 State and Local Governments) and A-128 (Audits for State and Local
18 Cooperative Agreements with State and Local Governments) and
19 Standard Forms 424 and 270. The Navy has the right to audit cost
20 reports used by the State to develop the cost summaries. Not less
21 than fourteen (14) months prior to the beginning of each federal
22 fiscal year, the State shall supply a budget estimate of what it
23 plans to do in the next year in the same level of detail as the
24 billing documents.

25
26 33.5 Except as allowed pursuant to subsections 33.6 or 33.7
27 below, within ninety (90) days of receipt of the accounting
28 provided pursuant to Subsection 33.4 above, the Navy shall
29 reimburse the State in the amount set forth in the accounting.

30
31 33.6 In the event the Navy contends that any of the costs set
32 forth in the accounting provided pursuant to Subsection 33.4 above
33 are not properly payable, the matter shall be resolved in
34 accordance with Section 12 (Dispute Resolution).

35
36 33.7 The Parties recognize there is an outstanding issue
37 concerning the Navy's continuing liability for payments to the
38 State in such case as payments are not made by DOD pursuant to the
39 DSMOA and Cooperative Agreements. The Parties acknowledge that at
40 such time as there is a resolution of this issue, it will be an
41 appropriate topic for an amendment to this Agreement.

42
43 34. EFFECTIVE DATE

44
45 34.1 This Agreement shall only be effective upon execution by
46 the Navy, DTSC and RWQCB.
47

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1 34.2 Any response action underway upon the effective date of
2 this Agreement shall be subject to the terms of this Agreement
3 unless the Parties agree otherwise.
4

5 35. BASE CLOSURE
6
7

8 35.1 The Navy does not currently plan to close the Naval
9 Supply Center, Alameda Annex. However, in the event that the
10 Naval Supply Center, Alameda Annex is closed, such closure, except
11 as is otherwise specifically provided by law, will not affect the
12 Navy's obligation to comply with the terms of this Agreement and to
13 specifically ensure the following:
14

15 (a) Continuing rights of access for the State in
16 accordance with the terms and conditions of Section 25 (Access
17 to Federal Facility);
18

19 (b) Availability of a Project Manager to fulfill the
20 terms and conditions of the Agreement;
21

22 (c) Designation of alternate DRC members as appropriate
23 for the purposes of implementing Section 12 (Dispute
24 Resolution); and
25

26 (d) Adequate resolution of any other problems identified
27 by the Project Managers regarding the effect of base closure
28 on the implementation of this Agreement.
29

30 35.2 Base closure will not, in and of itself, constitute a
31 Force Majeure under Section 10 (Force Majeure), or good cause for
32 extensions under Section 9 (Extensions), unless mutually agreed by
33 the Parties.
34

35 35.3 The Navy will make every effort to ensure that Base
36 closure cleanup funding will be allocated out of DERA funds, to the
37 extent authorized by law, and the State will be reimbursed in
38 accordance with the DSMOA. To the extent that oversight funding
39 for closure cleanup is not reimbursed through the DSMOA, the Navy
40 shall reimburse the State for work using the same criteria
41 identified in the DSMOA.
42

43 36. SUBSEQUENT LISTING ON THE NATIONAL PRIORITIES LIST
44

45 36.1 This Agreement shall terminate in the event that the
46 Navy signs a Federal Facility Agreement and/or Interagency
47 Agreement with the United States Environmental Protection Agency,

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1 concerning environmental response activities at the Federal
2 Facility undertaken or sought to be undertaken pursuant to the
3 DERP, CERCLA, Sec. 120 (e), 42 U.S.C. Sec. 9620 (e).
4

5 37. APPENDICES AND ATTACHMENTS
6

7 37.1 Appendices shall include all final documents setting
8 performance standards, specifications, requirements, or deadlines
9 as designated by the Parties, that are incorporated into this
10 Agreement by amendment in accordance with Section 29 (Amendment or
11 Modification of Agreement). These documents will be enforceable to
12 the extent they contain performance standards, specifications,
13 requirements, or deadlines. Recommendations or suggestions shall
14 not be interpreted to be enforceable mandates. Such documents
15 shall include but are not limited to deadlines established in
16 accordance with Section 8 (Deadlines) and Workplans. The Navy
17 shall maintain, as a part of this Agreement, a list of Appendices
18 which shall be updated as each new Appendix is added. All other
19 documents prepared as deliverables under this Agreement shall be
20 for information purposes, used as external reference documents, and
21 included in the Administrative Record made available to the public
22 in accordance with subsection 26.3.
23

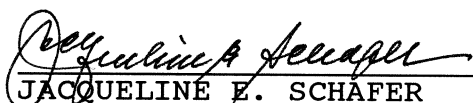
24 37.2 Attachments shall be for information only and shall not
25 be enforceable parts of this Agreement. The information in these
26 attachments is provided to support the initial review and comment
27 upon this Agreement, and they are only intended to reflect the
28 conditions known at the signing of this Agreement. None of the
29 facts related therein shall be considered admissions by, nor are
30 they legally binding upon, any Party with respect to any claims
31 unrelated to, or persons not a Party to, this Agreement. They
32 shall include:
33

- 34 (a) Map(s) of federal facility
35
36 (b) Chemicals of Concern
37
38 (c) Statement of Facts
39
40 (d) Memorandum of Understanding (DTSC, SWQCB and RWQCB)

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Each undersigned representative of a Party certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement.

UNITED STATES DEPARTMENT OF THE NAVY


JACQUELINE E. SCHAFER

Assistant Secretary of the Navy
(Installations and Environment)


29 Sept. 92
DATE

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY


JAMES M. STROCK

Secretary for Environmental Protection

9/29
DATE


BARBARA J. COOK, P.E.

Site Mitigation Chief
Region 2
Department of Toxic Substances Control

9/29/92
DATE


STEVEN R. RITCHIE

Executive Officer
Regional Water Quality Control Board
San Francisco Bay Region

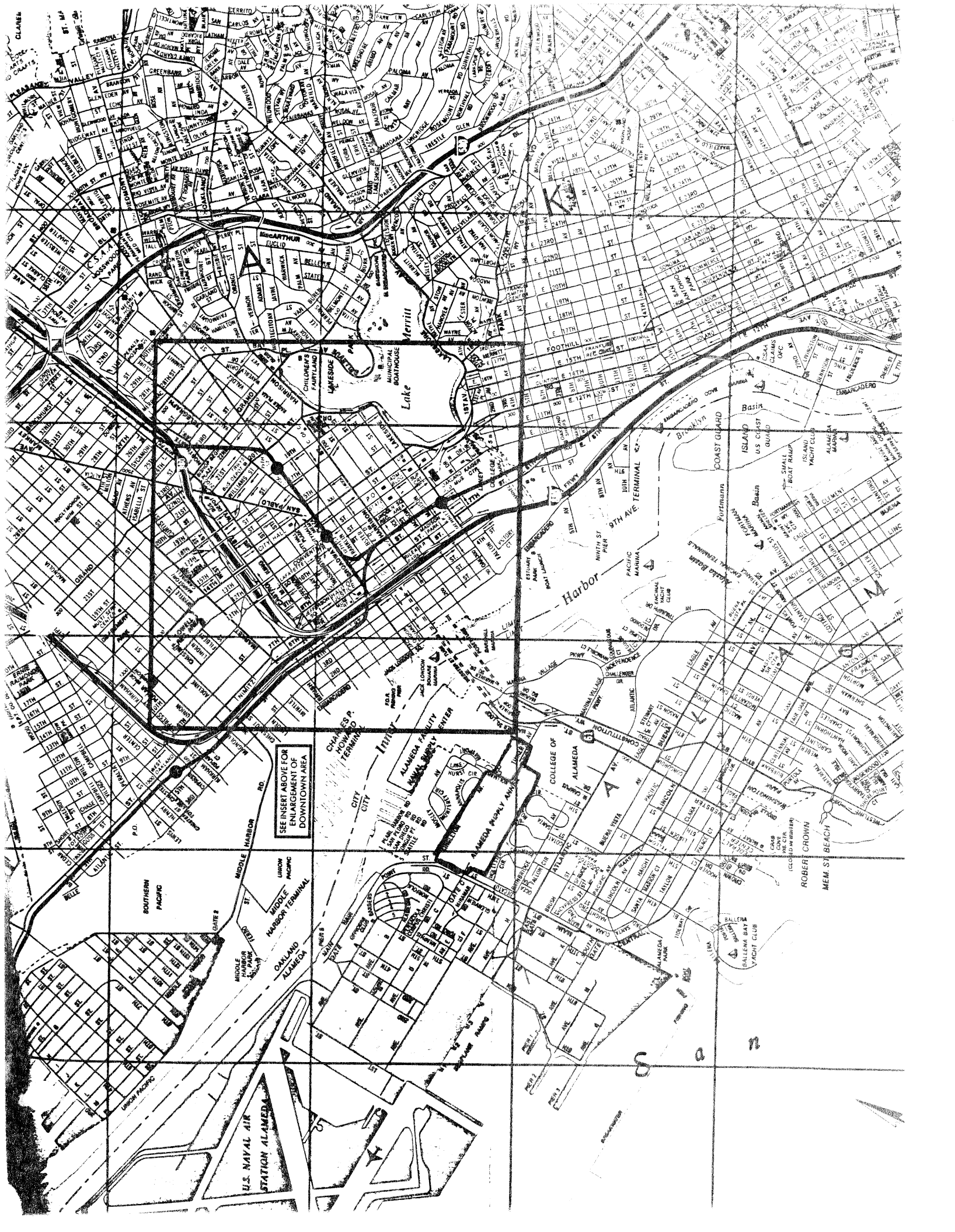
9/29/92
DATE

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APPENDIX A [ONLY IF APPLICABLE]

DEADLINES PREVIOUSLY ESTABLISHED

NOT APPLICABLE



APPENDIX B

OUTLINE OF TOPICS TO BE ADDRESSED IN NAVAL SUPPLY CENTER, ALAMEDA ANNEX REMEDIAL INVESTIGATION/FEASIBILITY STUDY (RI/FS) WORKPLAN

The following outline lists topics to be included at a minimum, as applicable, in the RI/FS Workplan for Mare Island Naval Shipyard. The workplan shall also include additional topics and tasks, as appropriate, set forth in the most recent version of the Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA (OSWER Directive 9355.3-01, Interim Final, October 1988) and applicable state law.

Any Party may request modification of any task of this Appendix in writing and shall specify:

1. The reason(s) for requesting the modification,
2. A clear description of the requested modification, and
3. Timetable and deadlines affected by the requested modification.

This appendix may be modified upon written agreement between the Project Managers of the DTSC, RWQCB, and the Navy.

I. RI/FS

1.0 MANAGEMENT PLAN OBJECTIVES

- 1.1 Determine the nature and full extent of contaminants in groundwater, surface water, surface soil, subsurface soil, sediments, air and biota;
- 1.2 Characterize the geographical, geological, and hydrogeological condition of the Site;
- 1.3 Identify all existing and potential sources of contamination and migration pathways;
- 1.4 Identify federal and state applicable or relevant and appropriate requirements (ARARs);
- 1.5 Develop data quality objectives based on site-specific condition, ARARs, and public health and environmental protective criteria;
- 1.6 Conduct a base wide Public Health and Environmental Evaluation based on reliable RI/FS information and data, and;
- 1.7 Identify and evaluate remedial alternatives in accordance with RI/FS guidance.

2.0 REMEDIAL INVESTIGATION

2.0(A) Description of Current Situation

- 2.1 Site Description
- 2.2(A) Site History
- 2.2(B) Site Demographic Information and Potential Public Health and Environmental Impacts

- 2.3 Results of Previous Investigation
 - 2.3.1 Ground Water Release Characterization
 - 2.3.2 Surface Water Release Characterization
 - 2.3.3 Surface and Subsurface Soil and Sediment Release Characterization
 - 2.3.4 Air Release Characterization
 - 2.3.5 Geological Study Results
 - 2.3.6 Hydrological Study Results
 - 2.3.7 Natural Resources Damage Survey Results
- 2.0(B) Actual Remedial Investigation**
 - 2.4 Federal and State applicable or Relevant and Appropriate Requirements (ARARs)

ARARs can be identified only on a site-specific basis. ARARs shall be identified at the following stages in the remedial planning process:

 - During scoping of RI/FS
 - During site characterization phase
 - During development of remedial alternatives in Operable Unit Feasibility Studies and the FS
 - During screening of Alternatives
 - During detail analysis of Alternatives
 - When the preferred Alternative(s) is selected
 - 2.5 Preparation of Plans
 - 2.5.1 Quality Assurance Project Plan
 - 2.5.2 Sample Plan
 - 2.5.3 Data Management Plan
 - 2.5.4 Public Participation Plan

The investigations in sections 2.6 through 2.10 below should result in data of adequate technical content to characterize the site and its actual or potential hazard to public health and environment and support the development and evaluation of remedial alternatives during FS.

- 2.6 Environmental Settings
 - 2.6.1 Regional Physiography and Topography
 - 2.6.2 Regional and Site Geology
 - 2.6.2.1 Stratigraphy
 - 2.6.2.2 Soils' attenuation capacity and mechanisms
 - 2.6.2.3 Other soil properties: structure, porosity, mineralogy, grain size distribution
 - 2.6.2.4 Regional geology
 - 2.6.2.5 Site geology
 - 2.6.3 Regional and Site Hydrogeology
 - 2.6.3.1 Hydraulic testings: obtain data for the development and evaluation of alternatives in OUFS and FS
 - 2.6.3.2 Aquifer tests to determine aquifer parameters and connection between aquifers

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- 2.6.3.3 Determine depths of water tables
- 2.6.3.4 Determine ground water flows
- 2.6.3.5 Define areas of recharge, discharge, tidal influence, and sea water intrusion
- 2.6.3.6 Vertical gradients
- 2.6.3.7 Hydraulic barriers (faults, bedrock, constant head sources)
- 2.6.3.8 Vadose Zone monitoring: moisture content, unsaturated conductivities and relative permeabilities
- 2.6.3.9 Regional ground water quality
- 2.6.3.10 Flow model(s)
- 2.6.4 Regional and site surface water quality
- 2.6.5 Regional and site meteorology and air quality
- 2.6.6 Regional and site ground water quality
- 2.6.7 Regional and site land use
- 2.6.8 Regional and site biology
- 2.7 Site-specific Source and Characterization Plan (efforts should begin with a survey of previous studies and other existing data, see section 2.3)
 - 2.7.1 Ground water migration pathway characterization (contaminant-specific)
 - 2.7.1.1 Vertical and horizontal extent of migration
 - 2.7.1.2 Rate of migration
 - 2.7.1.3 Ground water monitoring/contaminants transport model(s)
 - 2.7.1.4 Quality assured monitoring and sampling results shall be presented in Progress Reports
 - 2.7.1.5 Quality assured toxicity testing of ground water (results shall be presented in Progress Reports)
 - 2.7.1.6 Quality assured tissue concentration in plants and animals exposed to contaminated ground water (results shall be presented in Progress Reports)
 - 2.7.2 Contaminant surface Water Characterization
 - 2.7.2.1 Route of contaminated surface water
 - 2.7.2.2 Location and sampling frequencies
 - 2.7.2.3 Sampling techniques/methods/analysis
 - 2.7.2.4 Quality assured monitoring and sampling (results shall be presented in Progress Reports)
 - 2.7.2.5 Quality assured toxicity testing of surface water (results shall be presented in Progress Reports)
 - 2.7.2.6 Quality assured tissue concentration in plants and animals exposed to or collected from

- contaminated surface water (results shall be presented in Progress Reports)
- 2.7.3 Contaminated surface, Subsurface Soil and Sediment
 - 2.7.3.1 Specific areas to be studied
 - 2.7.3.2 Vertical and horizontal extent of contamination
 - 2.7.3.3 Probable quantities of subsurface wastes
 - 2.7.3.4 Predicted Rate of vertical migration
 - 2.7.3.5 Predictions of the long term disposition of contaminants
 - 2.7.3.6 Correlation among soil, subsoil, sediment, ground water, and surface water contamination.
 - 2.7.3.7 Locations of sampling stations and sampling frequencies
 - 2.7.3.8 Sampling techniques/methods/analysis
 - 2.7.3.9 Quality assured sampling and chemical analyses (results shall be presented in Progress Reports)
 - 2.7.3.10 Quality Assured toxicity testings (results shall be presented in Progress Reports)
 - 2.7.3.11 Quality assured tissue concentrations of contaminants in plants and animals (results shall be presented in Progress Reports)
- 2.7.4 Determine the extent of atmospheric contamination (contaminant specific)
 - 2.7.4.1 Tendency of substances to enter the atmosphere
 - 2.7.4.2 Air monitoring program (base on information from study of contaminated surface soils)
 - 2.7.4.3 Quality assured sampling and monitoring results shall be presented in Progress Reports
- 2.8 RCRA/CERCLA Integration
 - 2.8.1 RCRA Facility Assessment (RFA) (to the extent one has been conducted by the U.S. EPA under RCRA)
 - 2.8.1.1 Areas of concern
 - 2.8.1.2 Preliminary review
 - 2.8.1.2.2.1 Gathering new information
 - 2.8.1.2.2.1.1 Interview relevant individuals
 - 2.8.1.2.2.1.2 Collecting additional information
 - 2.8.1.2.2.2 Evaluating new information
 - 2.8.1.2.2.3 Investigating facility waste generation process
 - 2.8.1.2.2.4 Identifying Solid Waste Management Units (SWMUs)
 - 2.8.1.2.2.5 Other potential release of concern

- 2.8.1.2.2.6 Evaluating the facility's release potential
 - 2.8.1.2.2.7 Identifying significant Data gaps
 - 2.8.1.2.2.8 Determining the need for further action during the RFA
 - 2.8.1.2.2.8.1 Need for sampling visit
 - 2.8.1.2.2.8.2 Need for Removal Action
 - 2.8.1.2.2.8.3 Need for RI
 - 2.8.1.3 Conducting the Sampling Visit
 - 2.8.1.3.1 Developing sampling plan
 - 2.8.1.3.2 Conducting the sampling visit
 - 2.8.1.3.3 Analyzing and interpreting sampling results
 - 2.8.1.4 Final RFA Recommendations for Further Action
 - 2.8.1.4.1 Making RFA release determinations
 - 2.8.1.4.2 Making recommendations for each SMWU or group of SWMUs
 - 2.8.2 Further investigation of SWMUs under CERCLA
If 2.8.1.4 above recommends any further action, which is normally a task of a RCRA Facility Investigation (RFI), then the action shall be addressed under the RI.
 - 2.8.3 Corrective Action of SWMUs under CERCLA
If 2.8.2 above requires Corrective Action(s) for any SMWU(s), then these corrective actions shall be addressed under CERCLA.
 - 2.9 Site Characterization Analysis
Analyze all site investigation results to prepare a summary to ensure the investigation data are sufficient in quality and quantity to support the FS.
 - 2.9.1 Organize and present logically the relationship between site investigations for each medium
 - 2.9.2 Develop a summary of the types and extent of contaminants
 - 2.9.3 Correlate the Contents of Contaminants in each medium with the results of toxicity testing and tissue concentrations in plants and animals
 - 2.10 Supplemental Surveys and Investigations
The Navy may need to perform additional tasks in order to accomplish the RI/FS objectives. Such tasks may include additional field work and studies to provide information on newly discovered contaminants, pathways of concern, and bench scale tests of possible remedial technologies.
 - 2.11 Community Relation Support
This task includes but may not be limited to:
 - 2.11.1 Revision and additions to the PPP

- 2.11.2 Analysis of community attitudes toward proposed action(s)
- 2.11.3 Preparation and dissemination of information
 - 2.11.3.1 News releases
 - 2.11.3.2 Fact sheets and updates
 - 2.11.3.3 Slide shows
 - 2.11.3.4 Exhibits
 - 2.11.3.5 Audio and Visual Materials
- 2.11.4 Establishment of a Community Information Center
- 2.11.5 Arrangement for briefings and press conferences
- 2.12 Submit Progress Reports to DTSC and RWQCB
- 2.13 Remedial Investigation Report(s)

The RI report shall include all results from tasks 2.0(A) through 2.11 of this Appendix, interpretations of such results (including any graphical presentations, and statistical testing and analyses), correlations of such results among the contaminated media and biota, identification of data gaps, and a proposal for future work. If the plans prepared under section 2.6 of this Appendix are submitted separately, then the RI Report need not include those plans. The RI report shall be consistent with CERCLA, the NCP, applicable U.S EPA guidance, and state laws and guidance.

3.0 FEASIBILITY STUDY

- 3.1 Description of the current situation
 - 3.1.1 The Navy shall summarize the current situation based on task 2.0(A) and new data and information obtained from tasks 2.0(B) through 2.11 of this Appendix.
 - 3.1.2 Identify the actual and potential exposure pathways to humans that should be addressed by remedial action alternatives
 - 3.1.3 Identify the actual and potential exposure pathways to plants and animals that should be addressed by remedial action alternatives.
- 3.2 Baseline Risk Assessment (Risk Assessment for the No Action Alternative)

The Baseline Risk Assessment involves an ecological study and the following eleven steps which cover a range of complexity, quantification, and levels of effort.

 - 3.2.1 STEP 1: SELECTION OF INDICATOR CHEMICALS FOR HUMAN HEALTH EFFECTS
 - 3.2.1.1 Develop initial list of indicator chemicals

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- 3.2.1.2 Select final indicator chemicals
- 3.2.2 STEP 2: ESTIMATION OF EXPOSURE POINT
CONCENTRATION OF INDICATOR CHEMICALS
 - 3.2.2.1 Identify exposure pathways
 - 3.2.2.1.1 Chemical release sources
and media
 - 3.2.2.1.2 Identify and characterize
possible exposure points
 - 3.2.2.1.3 Integrated release
sources, transport media,
exposure points, and
exposure routes into
exposure pathways
 - 3.2.2.1.4 Presence of sensitive
human populations
 - 3.2.2.2 Estimate exposure point
concentrations
 - 3.2.2.2.1 Quantify chemical
releases
 - 3.2.2.2.2 Predict Environmental
Fate and Transport
 - 3.2.2.3 Compare to Requirements, Standards,
and Criteria
 - 3.2.2.3.1 Compare to ARARs:
 - Maximum Contaminant Levels
(MCL) and Maximum
Contaminant Level Goal
(MCLG)
 - National Ambient Air
Quality Standards (NAAQS)
 - Federal Ambient Water
Quality Criteria
 - State Environmental
Standards
- 3.2.3 STEP 3: ESTIMATION OF CHEMICAL INTAKES FOR HUMAN HEALTH
EFFECTS
 - 3.2.3.1 Calculate Air Intakes
 - 3.2.3.2 Calculate Ground water intakes
 - 3.2.3.3 Calculate surface water intakes
 - 3.2.3.4 Calculate intakes from other exposure pathways
 - 3.2.3.5 Combine pathway-specific intakes to yield total
oral and total inhalation intakes
- 3.2.4 STEP 4: TOXICITY ASSESSMENT FOR HUMAN HEALTH EFFECTS
- 3.2.5 STEP 5: RISK ASSESSMENT FOR HUMAN HEALTH EFFECTS
 - 3.2.5.1 Non-Carcinogenic effects
 - 3.2.5.2 Potential carcinogenic effects
 - 3.2.5.3 Uncertainties

- 3.2.6 STEP 6: SELECTION OF INDICATOR CHEMICALS FOR EFFECTS ON BIOTA
 - 3.2.7 STEP 7: ESTIMATION OF EXPOSURE POINT CONCENTRATION OF INDICATOR CHEMICALS FOR EFFECTS ON BIOTA
 - 3.2.8 STEP 8: ESTIMATION OF CHEMICAL INTAKES FOR EFFECTS ON BIOTA
 - 3.2.9 STEP 9: TOXICITY ASSESSMENT FOR EFFECTS ON BIOTA
 - 3.2.10 STEP 10: RISK ASSESSMENT FOR EFFECTS ON BIOTA
 - 3.2.11 STEP 11: ENVIRONMENTAL RISK ASSESSMENT
- 3.3 Development of Performance Goals and Analysis of Risks for each of Remedial Alternatives
- Perform this sub-task (3.3) for each remedial action alternatives at the alternative evaluation stage
- 3.3.1 Re-Evaluate indicator chemicals
 - 3.3.2 Identify potential exposure pathways
 - 3.3.3 Determine target concentrations at human exposure points
 - 3.3.4 Estimate target release rates
 - 3.3.5 Assess chronic risk for non-carcinogens
 - 3.3.6 Assess potential short-term health effects of each of the remedial alternatives
- 3.4 Development of Alternatives / FS Phase I
- Alternatives should be developed concurrently with the RI site characterization, with the results of one influencing the other in an iterative fashion
- 3.4.1 Establishment of Remedial Response Objectives based on the Baseline Risk Assessment and ARARs identification. Remedial response objectives should be developed to specify contaminants and media of interest, exposure pathways, and remediation goals that permit a range of treatment and containment alternatives to be developed.
 - 3.4.2 Identifying volumes and areas of media to which treatment or containment action may be applied
 - 3.4.3 Developing response actions for each medium
 - 3.4.4 Identifying potential treatment technologies
 - 3.4.5 Screening the technologies based on:
 - 3.4.5.1 Public Health and Environmental Impact
 - 3.4.5.2 Effectiveness
 - 3.4.5.3 Implementability
 - 3.4.5.4 Cost
 - 3.4.6 Assembling technologies and their associated containments or disposal requirements into alternatives
 - 3.4.7 Community Relations during FS Phase I
 - 3.4.8 Reporting and communication during FS Phase I

- 3.5 Screening of Alternatives / FS Phase II
 - 3.5.1 Initial screening of alternatives based on:
 - 3.5.1.1 Health and environmental protection
 - 3.5.1.2 Technical feasibility
 - 3.5.2 Community Relation during FS Phase II
 - 3.5.3 Reporting and communication during FS Phase II
- 3.6 Post-Screening Investigations
 - 3.6.1 Determination of data requirements
 - 3.6.2 Additional site characterization
 - 3.6.3 Treatability Study
 - 3.6.3.1 Conduct laboratory and/or bench scale studies to determine applicability of remedial technologies
 - 3.6.3.2 Analyze the technologies to determine the testing requirements
 - 3.6.3.3 Develop a testing plan:
 - 3.6.3.3.1 Testing types
 - 3.6.3.3.2 Testing goals
 - 3.6.3.3.3 Levels of effort
 - 3.6.3.3.4 Data management and interpretation guidelines
 - 3.6.3.4 Perform tests
 - 3.6.3.5 Evaluation of testing results
 - 3.6.3.6 Scale-up those technologies based on testing results
- 3.7 Detail Analysis of the Remaining Alternatives / FS Phase III
 - 3.7.1 Health information/environmental effects
 - 3.7.2 Technical aspects of the remedial alternatives
 - 3.7.3 Evaluation criteria for detail analysis of alternatives
 - 3.7.3.1 Short-term effectiveness
 - 3.7.3.2 Long-term effectiveness and permanence
 - 3.7.3.3 Reduction of toxicity, mobility or volume
 - 3.7.3.4 Implementability
 - 3.7.3.5 Cost
 - 3.7.3.6 Compliance with ARARs
 - 3.7.3.7 Overall protection of human health and the environment
 - 3.7.3.8 State acceptance
 - 3.7.3.9 Community acceptance
 - 3.7.4 Community relations during FS Phase III
 - 3.7.5 Reporting and communication during FS Phase III
- 3.8 Recommended Remedial alternatives

3.9 Submit Progress Reports to DTSC and RWQCB pursuant to the progress report requirements.

3.10 Feasibility Study Report(s)

The report shall include the results of tasks from 3.1 through 3.8 of this Appendix. The FS report shall be consistent with CERCLA, the NCP, the U.S. EPA Risk Assessment Guidance for Superfund (Volumes I & II) and any subsequent revisions thereof, the Superfund Exposure Assessment Manual, EPA, Draft, April 1988 and any revisions thereof, the Compendium of Superfund Field Operations Methods, other applicable U.S. EPA and State guidance, California Health and Safety Code, California Code of Regulations, Title 22, and the California Water Code.

II. Development of Proposed Plan for Remedial Action

The Proposed Plan shall be consistent with CERCLA, the NCP, California Health and Safety Code, California Code of Regulations, Title 22, California Water Code, and applicable U.S. EPA and State guidance.

III. Public Review Comment

The Navy shall provide the public the opportunities of review and comment on the RI and FS reports and the Remedial Action Plan(s) in a manner consistent with Section 26, Public Participation, of this Agreement.

IV. Responsiveness Summary

The Navy shall prepare a Responsiveness Summary (part of the Record of Decision) after the public comment period in a manner consistent with CERCLA, Section 26, Public participation, of this Agreement, U.S. EPA Guidance on Community Relations for Operable Unit Response Action, the NCP, California Health and Safety Code, California Code of Regulations, Title 22, and applicable U.S. EPA and State Guidance.

V. Remedial Action Plan(s)

1.0 The remedial action plan(s) shall be based upon Section 25350 of the California Health and Safety Code, Subpart E of the NCP, and any amendments thereto and upon all of the following factors, to the extent that these factors are consistent with these federal regulations and do not require a less stringent level of cleanup than these federal regulations:

- 1.1 Health and safety risks posed by the conditions at the site
- 1.2 The effect of contamination or pollution levels upon present, future, and probable beneficial uses of contaminated, polluted, or threatened resources
- 1.3 The effect of alternative remedial action measures on the reasonable availability of groundwater resources for present, future, and probable beneficial uses
- 1.4 Site specific characteristics
 - 1.4.1 Potential of offsite migration of hazardous substances
 - 1.4.2 Surface, subsurface soil and hydrogeologic condition
 - 1.4.3 Preexisting background contamination levels
 - 1.4.4 Relationship of contaminant concentration to biological effects including human health and effects on biota.
- 1.5 Cost effectiveness of alternative remedial action measures
 - 1.5.1 Total short-term and long-term costs of actions
- 1.6 Potential environmental impacts of alternative remedial action measures
- 1.7 Statement of reasons setting forth the basis for the removal and remedial actions selected
 - 1.7.1 Evaluation of each proposed alternative
 - 1.7.2 Evaluation of the consistency of the removal and remedial actions with federal regulations
 - 1.7.3 Reasons for rejection of alternative removal and remedial actions
- 1.8 Monitoring Plan
- 1.9 Nonbinding preliminary allocation of responsibility (NBAR)

VI. Remedial Design

The Navy shall prepare Preliminary and Final Remedial Design documents which provide detailed engineering design and specifications which will allow other Parties to review and to ensure the selected remedy(ies) fully considered by the Navy in the Design.

VII. Remedial Action Work Plan

The Navy shall prepare a Remedial Action Work Plan, using appropriate U.S. EPA and State guidance and state laws, for each remedial action. The work plan(s) shall contain the following:

1. Tentative formulation of remedial action team, descriptions of duties, and lines of authority in the management of the construction, operation and maintenance activities;
2. Description of the roles and relationships of the Navy, resident engineers, independent quality assurance team, remedial design professionals, and remedial constructor;
3. Process for selection of remedial action constructor(s);
4. Schedule for the remedial action(s) and process to continuously update the project schedule;
5. Methods to implement the construction quality assurance plan, including criteria and composition of the independent quality assurance team;
6. A health and safety plan for field construction activities;
7. Strategy for implementing the Contingency Plan;
8. Procedure for data collection during the remedial action(s) to validate the completion of the project;
9. Monitoring Plan; and
10. Requirements for project closeout.

VIII. Contingency Plan

The Navy shall develop a Contingency Plan, using appropriate U.S. EPA and State guidance and state laws, to protect the local affected human population, and biota in the event of an accident or emergency. It may incorporate an air monitoring plan, a spill control, and countermeasures plan, if applicable, for the site.

IX. Five-Year Review

If the selected remedial action results in any hazardous substances, pollutants, or contaminants remaining at the site, the Navy shall review such remedial action and the Monitoring

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Plan no less often than each 5 years after the initiation of such remedial action as mandated in 9621(c) of SARA and the Monitoring Plan as required in Section VII.9 above.

X. Project Closeout

At the completion of the remedial action(s), the Navy shall prepare a Project Closeout Report which certifies that all items contained in the final Remedial Action Plan, including the completion of the Monitoring Plan and any additional remedial actions which may be necessary as a result of findings from the Monitoring Plan, have been completed. The report shall include proper documentation (e.g., test results) substantiating that the performance standards are being met. The report should also include "Record Drawings" of the project.

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QUALITY ASSURANCE PROJECT PLAN OUTLINE

- 1.0 Bottom of title page should include signature blocks for the following approving personnel:
 - 1.1 The Navy Project Manager
 - 1.2 The Navy Responsible QA Officer
 - 1.3 Contractor's and/or Sub-Contractor's Project Officer
 - 1.4 Contractor's and/or Sub-Contractor's QA Officer
- 2.0 Table of Contents includes:
 - 2.1 Introduction
 - 2.2 Listing of the 16 QAPP components
 - 2.3 Listing of Appendices required to augment the QAPP
 - 2.4 Listing of all individuals receiving official copies of the QAPP and its revisions
- 3.0 Project Description
- 4.0 Project Organization and Responsibility
- 5.0 Quality Assurance Objectives for Measurement of Data. For each major parameter provide Quality Assurance Objectives for:
 - 5.1 Precision
 - 5.2 Accuracy
 - 5.3 Completeness
 - 5.4 Representativeness
 - 5.5 Comparability
- 6.0 Sampling Procedures
 - 6.1 Method of collection
 - 6.2 Rational for sample site selection
 - 6.3 Preparation of sampling equipment and containers
 - 6.4 Type and volume of sample container
 - 6.5 Description of decontamination procedures
 - 6.6 Holding time and preservation method
 - 6.7 Time consideration for sample shipping
 - 6.8 Documentation of sampling history, conditions and analyses (including forms, note books, etc.)
- 7.0 Sample Chain of custody Procedures
 - 7.1 Field Sampling Operation
 - 7.1.1 Documentation of exact location and consideration associated with sample acquisition
 - 7.1.2 Documentation of procedure for preparation of reagents
 - 7.1.3 Documentation of method for sample preservation
 - 7.1.4 Labeling techniques
 - 7.1.5 Availability of Chain of Custody form
 - 7.2 Lab Operation
 - 7.2.1 Identification of sample custodian

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- 7.2.2 Lab procedure for sample handling, storage and
dispersement for analysis
 - 7.2.3 Specifications of lab sample custody
procedures for sample handling, storage and
dispersement for analysis
- 8.0 Calibration Procedures and Frequency and Information for Field
Equipment and Lab Equipment:
 - 8.1 Major measurement parameters
 - 8.1.1 Pollutant measurement system
 - 8.1.2 Standard Operation Procedure (SOP)
 - 8.1.3 Description of calibration procedures
 - 8.2 List frequency of re-calibration
 - 8.3 List calibration standards
 - 8.4 Where calibration and repairs logged
- 9.0 Analytical Procedures
 - 9.1 Cite method name and number for chemical analysis
 - 9.2 Description of analytical procedure
 - 9.2.1 Analytes
 - 9.2.2 Parameter group
 - 9.2.3 Method name and number
 - 9.2.4 Detection limit
 - 9.3 Description of Procedures for Toxicity Testing
 - 9.3.1 Method name and description
 - 9.3.2 History of organism used in testing, including
collection site, date of collection, visual
evaluation of organisms, and other relevant
information
 - 9.3.3 Results of positive (toxic) control tests
 - 9.4 Description of Procedures for Tissue Analyses
 - 9.4.1 Method description
 - 9.4.2 History of organisms used for tissue analysis,
including site characteristics, if evaluating field
collected populations, and other information about
collection if performing laboratory exposures of
organisms to contaminated sites media (water, soil or
sediment)
 - 9.4.3 Designation of proper experimental control for
comparison to contaminant-exposed organisms (e.g.,
uncontaminated local populations of organisms as a
field control for comparison to site collected or the
use of pre-exposed organisms as a baseline for
laboratory-exposed organisms)
- 10. Data Reduction, Validation and Reporting
 - 10.1 Data reduction scheme planned on collected data
 - 10.2 Criteria used to validate data integrity during data
collection and reporting
 - 10.3 Methods used to identify and treat outliers

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- 10.4 Reporting scheme for collection of raw data
- 10.5 Key individuals in this reporting scheme
- 11. Internal Quality Control Checks (both Lab and Field)
 - 11.1 Replicates
 - 11.2 Spiked samples
 - 11.3 Split samples
 - 11.4 Control blanks
 - 11.5 Blanks
 - 11.6 Internal standards
 - 11.7 Zero and span gases
 - 11.8 Quality control samples
 - 11.9 Surrogate samples
 - 11.10 Calibration standards and devises
 - 11.11 Reagent checks
 - 11.12 Toxicity Testing QC
 - 11.12.1 Relationship of result from positive (toxic) controls to laboratory and U.S. EPA standards
 - 11.12.2 High quality laboratory control test water as defined by the toxicity test method
 - 11.12.3 Water quality monitoring data from the duration of the test as required by the toxicity test method
 - 11.12.4 Random or "blind" testing of samples
 - 11.12.5 Replicates
 - 11.12.6 Quality Control Samples
 - 11.12.7 Split Samples
 - 11.13 Tissue Analysis QC
 - 11.13.1 Replicates
 - 11.13.2 Spikes
 - 11.13.3 Split Samples
 - 11.13.4 Control Blanks
 - 11.13.5 Pre-exposed tissue
 - 11.13.6 Field-control population tissue
 - 11.13.7 Blanks
 - 11.13.8 Internal Standards
 - 11.13.9 Quality Control Samples
 - 11.13.10 Surrogate Samples
 - 11.13.11 Calibration Standards and Devises
 - 11.13.12 Reagent Checks
- 12. Performance and System Audits
 - 12.1 Internal Audits
 - 12.1.1 Description of audits
 - 12.1.2 Audited by
 - 12.1.3 Frequency of audits
 - 12.1.4 Person to receive audit reports
 - 12.2 External Audits
 - 12.2.1 Description of audits

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- 12.2.2 Audited by
 - 12.2.3 Person to receive audit reports
- 13. Preventive Maintenance
 - 13.1 Schedule of maintenance to minimize downtime
 - 13.2 Critical spare parts to minimize downtime
- 14. Routine Procedures Used to Assess:
 - 14.1 Data Precision
 - 14.2 Data Accuracy
 - 14.3 Data Completeness
 - 14.4 Data Representativeness
 - 14.5 Data Coparability
- 15. Corrective Action
 - 15.1 Procedures include the following:
 - 15.1.1 Limit for data acceptability beyond which corrective action is required
 - 15.1.2 Re-evaluation of analyst's work and instrumentation checks
 - 15.1.3 Corrective action initiator and approver
 - 15.2 Other QA activities may also initiate corrective action:
 - 15.2.1 Performance audits
 - 15.2.2 System audits
 - 15.2.3 Lab/Interfield comparison studies
 - 15.2.4 QA program conducted by quality assessment management staff (QAMS)
- 16. Quality Assurance Report and Management
 - 16.1 Periodic assessment of data quality, precision and completeness
 - 16.2 Results for performance audits
 - 16.3 Results for system audits
 - 16.4 QA problems and solutions
 - 16.5 Frequency of report

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SAMPLE PLAN OUTLINE

- 1 Objectives of the Sampling Effort
- 2 Maps of All Pertinent Locations and Sampling Points
- 3 Rationale for Sampling Location and Numbers of Samples
- 4 Request for Analyses
 - 4.1 Narrative request for analyses
 - 4.2 Tabular request for analyses
- 5 Field Methods and Procedures
 - 5.1 Sample collection
 - 5.2 Disposal of contaminated materials
 - 5.3 Equipment decontamination
 - 5.4 Sample containers
 - 5.5 Sample preservation
 - 5.6 Sample shipment
 - 5.7 Sample documentation
 - 5.8 Quality Assurance
 - 5.8.1 Replicates
 - 5.8.2 Blanks
 - 5.9 Site Safety Plan

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DATA MANAGEMENT PLAN OUTLINE

Field sampling and analytical procedures for the acquisition and compilation of field and lab data and demonstrated activities are subject to data management procedures.

1. Document and track data, information, and results (all analytical data collected by the Navy shall be reported separately using the same format and in the same report for easy reference)
 - 1.1 Field activities
 - 1.2 Sample management and tracking
 - 1.3 Document control and inventory
2. Identify lab documentation procedures
3. Project file requirements
4. Project related progress

* * * * *

APPENDIX C

ALL FINAL PRIMARY AND SECONDARY DOCUMENTS
WHICH WILL BE CREATED
IN ACCORDANCE WITH SECTION 7 (REVIEW AND APPROVAL)

PRIMARY DOCUMENTS:

1. RI Report
2. FS Report
3. Proposed Plan
4. Remedial Action Plan
5. Remedial Designs (RDs)
6. Remedial Action Workplans, which may include operation and maintenance plans.

SECONDARY DOCUMENTS:

1. Sampling Data Results
2. Removal Action Reports (if generated)
3. Public Notice and Fact Sheets
4. Treatability Studies (if generated)
5. Initial Screening of Alternatives
6. Detailed Analysis of Alternatives
7. Remedial Action Schedule
8. Engineering Plans
9. Post-Remedial Sampling Design Plan
10. Post-Remedial Sampling Completion Report (if generated)

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APPENDIX D

ALL DEADLINES WHICH WILL BE ESTABLISHED IN
ACCORDANCE WITH SECTION 8 (DEADLINES) AND WHICH
MAY BE EXTENDED IN ACCORDANCE WITH SECTION 9 (EXTENSIONS)

<u>DRAFT</u> <u>DOCUMENT</u>	<u>DEADLINE</u>	<u>TARGET DATE</u>
Work Plan	Completed	
Sampling Plan	Completed	
QAPP	Completed	
HSP	Completed	
CRP	Completed	
Remedial Investigation	4/26/93	
Sampling Results Tech Memo		11/9/92
Removal Action Reports		T.B.D
Feasibility Study	10/30/93	
Initial Screening of Alts		4/19/93
Detailed Analysis of Alts		6/28/93
Treability Studies		T.B.D
RAP/Prop. Plan	6/30/94	
Responsive Summary		1/26/95
Remedial Design	T.B.D	
Public Notices & Fact Sheets		T.B.D
Engineering Plans		" " "
HSP	T.B.D	
Remedial Action Completion REP (T.B.D)		
Post-Remedial Samp Design Plan (T.B.D)		

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Post-remedial Compl'n Report (T.B.D)

- * The Risk Assessment report will be included in the RI submittal.
- * The Remedial Action Schedule will be included in the RAP.

APPENDIX E [ONLY IF APPLICABLE]

FINAL PRIMARY DOCUMENTS AND COMPLETED SECONDARY DOCUMENTS

These documents are hereby made an integral and enforceable part of this Agreement. Copies shall be available as part of the administrative record, as provided in subsection 26.3:

A. Final Primary Documents:

1. RI/FS Workplans
2. Health safety Plan
3. Quality Assurance Project Plan
4. Sampling Plan

B. Completed Secondary Documents:

N/A

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ATTACHMENT A

MAPS

ATTACHMENT B

CHEMICALS OF CONCERN

This description of the toxicity of chemicals of concern at Naval Supply Center, Alameda Annex is for reference only and should not be interpreted as describing effects on any individual person.

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1. **Asbestos** -- inhalation or ingestion of asbestos can cause a debilitating lung disease called asbestosis; a rare cancer of the chest and abdominal lining called mesothelioma; and cancers of the lung, esophagus, stomach, colon, and other organs. Lung cancer may not develop until 35 to 40 years after heavy exposure, and other malignancies are also delayed. Combining smoking with occupational exposure to asbestos increases the lung cancer rate above the rate due to either smoking or asbestos exposure alone. Asbestos exposure to children is of special concern since they have a greater remaining lifespan than adults, their lifetime risk of developing mesothelioma is greater (U.S. EPA, June 1985). Asbestos is listed as carcinogen under Proposition 65.

2. **Arsenic** -- arsenic compounds have been shown to produce acute and chronic toxic effects which include systemic irreversible damage. The trivalent (III) compounds are the most toxic and tend to accumulate in the body. Arsenic has been classified by the U.S. EPA as a human carcinogen, according to EPA's Proposed Guidelines for Carcinogen Risk Assessment, based upon evidence of human carcinogenicity through inhalation and ingestion exposure (U.S. EPA, 1985i). Arsenic compounds are listed hazardous materials (No. 65) in Section 66680, Title 22, California Administrative Code. The U.S. EPA's MCL for Arsenic in water is 50 parts per billion (ppb).

3. **Benzene** (V.O.C) -- exposure to liquid and vapor may produce primary irritation to the skin, eyes, and upper respiratory tract. If liquid is aspirated into the lung, it may cause pulmonary edema and hemorrhage. Erythema, vesiculation, and dry, scaly dermatitis may also develop from defatting of the skin. Acute exposure to benzene results in central nervous system depression. Headache, dizziness, nausea, convulsions, coma and death may result. Chronic exposure is well documented to cause blood changes. Aplastic anemia may develop with anemia, leukopenia, and thrombocytopenia. NIOSH has concluded that benzene is leukemogenic.

4. **Beryllium** -- is an amphoteric element; that is, it is capable of reacting with either an acid or a base, and its salts will readily hydrolyze. Routes of exposure are by inhalation, skin contact, eye contact or ingestion. The most normal route is by inhalation. Inhalation of beryllium may cause two types of reaction: acute and chronic. The result may be pneumonitis, nasopharyngitis or tracheobronchitis (DeNardi, 1950). Pulmonary manifestations usually occur with dyspnea and a chronic cough. Other symptoms include rapid weight loss, anorexia, fatigue, weakness, and malaise (Tepper, 1961). Skin contact will produce dermatitis, and if beryllium is under the skin, will produce

necrosis of adjacent tissue with the formation of an ulcer. Eye contact will result in conjunctival inflammation. Beryllium and its compounds have been listed by the U.S. EPA as a carcinogen (Second Annual Report on Carcinogens, NTP 81-43, Dec. 1981, pp 58-60) (Merck, 1983). Beryllium is a listed hazardous material (No. 112) in Section 66680, Title 22, California Administrative Code and as a listed "persistent and bioaccumulative toxic substance" in Section 66699, Title 22, California Administrative Code. Beryllium is also an "Extremely Hazardous Waste" as defined in Section 66720, Title 22, California Administrative Code.

5. **Chromium (Total)** -- chromium compounds in the trivalent (III) state are less toxic than chromium in the hexavalent (VI) state. Chromium has been classified by the U.S. Environmental Protection Agency's Carcinogen Assessment Group (EPA CAG) in Class A (human carcinogen) through the inhalation route (U.S. EPA, 1985a). Chromium compounds are listed hazardous materials (No. 204) in Section 66680, Title 22, California Administrative Code. The U.S. EPA's MCL for total chromium in water is 51 ppb.

7. **Copper** -- copper salts act as irritants to skin causing itching, erythema, and dermatitis. Conjunctivitis, ulceration and turbidity of the cornea may be caused to the eye. Metallic copper may cause keratinization of the hands and soles of the feet. Fumes and dust may cause irritation of the upper respiratory tract, metallic taste in the mouth, nausea, metal fume fever, and in some instances discoloration of the skin and hair.

8. **1,2-Dichloroethane** (1,2-DCA, Ethylene Dichloride) (V.O.C)-- ingestion and inhalation of 1,2-DCA through short-term exposure may cause nausea, vomiting, mental confusion, dizziness, and pulmonary edema (Sittig, 1981). In addition, liquid and vapor may cause eye and skin irritation. Acute exposures can lead to death from respiratory and circulatory failure. Long term effects include liver and kidney damage and neurologic changes. 1,2-DCA is classified by the International Agency for Research on Cancer (hereinafter "IARC") as a Category B2 carcinogen (probable human carcinogen). 1,2-DCA is a listed hazardous material (No.329) in Section 66680, Title 22, California Administrative Code. The U.S. EPA's MCL for 1,2-DCA in water is 5 ppb.

9. **1,1-Dichloroethylene** (1,1-DCE, Vinylidene Chloride) (V.O.C)-- short-term exposures to high vapor concentrations of 1,1-DCE can result in central nervous system depression, which may progress to unconsciousness with prolonged exposure. The liquid is moderately

irritating to the eyes, causing pain, conjunctival irritation, and possible transient injury. The liquid is irritating to the skin after only a few minutes' contact (Clayton and Clayton, 1981). Long-term effects include damage to the liver and kidneys. The IARC classification for 1,1-DCE is Category 3 (possible human carcinogen). 1,1-DCE is listed as a hazardous material (No. 771) in Section 66680, Title 22, California Administrative Code. The U.S. EPA's MCL for 1,1-DCE in water is 7 ppb.

10. **Trans-1,2-Dichloroethylene** (1,2-DCE) {V.O.C} -- is a chlorinated ethylene and has anesthetic properties at high concentrations. Humans inhaling high concentrations of the compound display the following symptoms: nausea, vomiting, weakness, tremor and cramps, followed by unconsciousness (U.S. EPA, 1985b). 1,2-DCE was shown not to be a mutagen in three different microbial tests. No data are available to determine the compound's teratogenic and carcinogenic effects. The U.S. EPA has not rated this compound on the basis of carcinogenicity (U.S. EPA, 1985i). 1,2-DCE is a listed hazardous material (No. 259) in Section 66680, Title 22, California Administrative Code.

11. **1,2-Dichloropropane** {V.O.C}-- prolonged contact with liquid 1,2-Dichloropropane through short-term exposures may cause dermatitis by defatting the skin. Undiluted, it is moderately irritating to the eyes, but does not cause permanent injury (Sittig, 1981; Proctor and Hughes, 1978). Based on animal experiments, inhalation or ingestion of high levels of 1,2-Dichloropropane can be expected to reproduce central nervous system depression. Liver and kidney toxicity are the long-term effects of exposure. 1,2-Dichloropropane is a listed hazardous material (No. 264) in Section 66680, Title 22, California Administrative Code.

12. **Lead** -- short-term exposure to lead can cause reversible kidney damage, but prolonged exposure at high concentrations may result in progressive kidney damage and possibly kidney failure. Anemia, due to the inhibition of hemoglobin synthesis and a reduction in the lifespan of circulating red blood cells, is an early manifestation of lead poisoning (U.S. EPA, 1985c). The most serious effects associated with markedly elevated blood levels are severe neurotoxic effects that include irreversible brain damage, as indexed by the occurrence of acute or chronic encephalopathic symptoms (U.S. EPA, 1985d). Lead compounds are listed as hazardous materials (No. 406) in Section 66680, Title 22, California Administrative Code. The U.S. EPA's MCL for lead in water is 50 ppb.

13. **Polychlorinated Biphenyls (PCBs)** -- exposure is by inhalation of fumes or vapors, and percutaneous absorption of liquid, ingestion, eye and skin contact. Local harmful effects are: with prolonged skin contact PCB's may cause the formation of comedones, sebaceous cysts and chloracne. Irritation of eyes, nose and throat may also occur. Systemic effects are usually dependent upon the degree of chlorination; the higher the degree, the stronger the effects. Acute and chronic exposure can cause liver damage. Symptoms include edema, jaundice, vomiting, anorexia, nausea, abdominal pains, and fatigue (Sittig, 1985). The IARC lists PCBs in Category I (sufficient evidence of human carcinogenicity) in its weight of evidence ranking for potential carcinogens (Gilbert, et al. 1980). The EPA CAG has classified PCBs as B2 carcinogens (probable human carcinogen) (U.S. EPA, 1985a). PCBs are a listed hazardous material (No. 606) in Section 66680, Title 22, California Administrative Code. PCBs are also listed as an "Organic Persistent and Bioaccumulative Toxic Substance", Section 66699(c), Title 22, California Administrative Code. PCBs are also an "Extremely Hazardous Waste" as defined in Section 66720, Title 22, California Administrative Code. PCBs are incompatible with strong oxidizers.

17. **Tetrachloroethylene** (PCE, Perchloroethylene) {V.O.C} -- short-term exposure to PCE through ingestion and inhalation may cause nausea, vomiting, headache, dizziness, drowsiness, and tremors. Skin contact with liquid causes irritation and blistering. Both liquid and vapor are irritating to the eyes (Plunkett, 1976). Liver and kidney toxicity are the long-term effects. PCE has been classified by the IARC in Category 3 (possible human carcinogen). PCE is a listed hazardous material (No. 576) in Section 66680, Title 22, California Administrative Code.

18. **1,1,1-Trichloroethane** (TCA) {V.O.C} -- long-term exposure to TCA produces a narcotic effect and depresses the central nervous system. Acute exposure symptoms include dizziness, incoordination, drowsiness, increased reaction time, unconsciousness, and death (Sittig, 1985). The U.S. EPA has listed TCA (1,1,1-TCA) as a hazardous waste and a Priority Toxic Pollutant in 40 CFR 261. The U.S. EPA's MCL for 1,1,1-TCA in water is 200 ppb. 1,1,1-TCA is incompatible with strong caustics, oxidizers and chemically active metals (aluminum, magnesium, sodium, etc.).

19. **Trichloroethylene** (TCE) {V.O.C} -- acute exposure to TCE depresses the central nervous system, causing such symptoms as headache, dizziness, vertigo, tremors, irregular heartbeat, fatigue, nausea, vomiting and blurred vision. The vapors may cause

irritation of the eyes, nose, and throat. The liquid may cause burning irritation and damage to the eyes. Repeated or prolonged skin contact with the liquid may cause dermatitis (Sittig, 1981). Long-term effects may include liver and kidney injury. TCE is included in IARC Category 3 (possible human carcinogen). TCE is a listed hazardous material (No. 744) in Section 66680, Title 22, California Administrative Code. The U.S. EPA's MCL for TCE in water is 5 ppb.

20. **Vinyl Chloride** {V.O.C}-- inhalation of vinyl chloride causes headache, dizziness, abdominal pain, numbness, and tingling of the extremities. The vapors cause eye irritation. Skin contact with the liquid causes irritation and frostbite due to evaporation; skin contact with the vapor may also cause irritation (Plunket, 1976; Sittig, 1981, Toxicology Data Bank, 1984). The long term effects due to exposure to vinyl chloride include liver damage and liver cancer. There is evidence of mutagenicity. The IARC has classified vinyl chloride in Category 1 for carcinogens (known human carcinogen). Vinyl chloride is a listed hazardous material (No. 769) in Section 66680, Title 22, California Administrative Code; and is also a listed "Extremely Hazardous Waste" as defined in Section 66720, Title 22, California Administrative Code.

21. **Waste Acids** -- Acids are listed hazardous materials in section 66680, Title 22, California Administrative Code. Health Effects by waste acids are routed by ingestion, inhalation or skin contact. These effects are irritation to the eyes, nose, throat, lungs and mucous membrane linings. Contact with the skin will cause mild severe irritation. Over exposure has been known to cause laryngeal, pulmonary edema, vomiting, diarrhea and shock. Acids are incompatible with strong oxidizers, strong caustics, strong bases, organics, chlorinates, metals and active metals.

REFERENCES

1. J. Doull, eds. 1975. Toxicology, The Basic Science of Poisons, New York: Macmillian Publishing Co., Inc.
2. Key, M.M., et al., eds. Revised Edition June 1977. Occupational Diseases, A Guide to Their Recognition, U.S. Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control, National Institute for Occupational Safety and Health.
3. Sax, N.I. 1984. Dangerous Properties of Industrial Materials, 6th ed. New York: Van Nostrand Reinhold Co.

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ATTACHMENT C

STATEMENT OF FACTS

1.0 SITE LOCATION

The Naval Supply Center (NSC) Alameda Annex (Facility) which is the subject of this agreement is located at 2155 Mariner Square Loop, in the city of Alameda, California. The Facility, which is geographically situated at eastern shore of the San Francisco Bay, is approximately a mile south of the San Francisco-Oakland Bay Bridge. The entire facility is approximately 81 acres in size and bounded by Alameda Navy Housing, School and Day Care Center to the North; Mariner Square loop to the East; Fifth Street to the West and College of Alameda to the South.

2.0 SITE DESCRIPTION

The Facility consists of six (6) warehouses, four (4) administration buildings, and a 10-acre unpaved scrapyard. Two (2) office buildings (366 and 365) and a scrap bin are within the confinement of the scrapyard. Currently, the warehouses are being used as storage for Navy fleet supplies. The scrapyard, on the other hand, has been leased by the Navy to the Defense Reutilization and Marketing Office (DRMO) since 1980. DRMO uses the scrapyard to store and screen metal scrap and recyclable materials from military weapon parts re-sale.

3.0 SITE BACKGROUND AND HISTORY

From 1930 to the late 1940s the Facility and most of the surrounding areas were used by the San Francisco Bay Airdrome as an airport. The office building in the scrapyard was shut down due to air traffic competition against the large Naval Air Station (NAS) nearby. In December 12, 1951, NAS acquired the airport and built the majority of warehouses and bulk storage areas on the former airstrip.

The Naval Supply Center has annexed the Facility since 1980 and has leased the northeastern of the Facility to DRMO for scrap reuse operations.

Federal Facility Site
Remediation Agreement for
Naval Supply Center, Alameda Annex

ATTACHMENT D

MEMORANDUM OF UNDERSTANDING
BETWEEN
DTSC, SWQCB AND RWQCB

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DEPARTMENT OF HEALTH SERVICES
AND
THE STATE WATER RESOURCES CONTROL BOARD
THE REGIONAL WATER QUALITY CONTROL BOARDS
FOR THE CLEANUP OF HAZARDOUS WASTE SITES**

August 1, 1990

INTRODUCTION

This Memorandum of Understanding (MOU) consists of general and specific provisions for the cleanup of hazardous waste sites. General provisions include the scope of the agreement, which defines the parties and the type of sites to which the MOU applies; the principles, not found in law or regulation, which govern the conduct of the parties; and the methods for implementation, which explain the manner by which the parties will execute, and perform according to, this MOU.

Specific provisions, which address the protocol the parties will follow for the cleanup of hazardous waste sites, include: the method by which the lead agency and, consequently, the support agency are determined; the responsibilities of the lead and support agencies, which are defined in terms of tasks to be accomplished; procedures to be followed to ensure coordination; outputs to be produced to ensure that minimum technical requirements are satisfied; the manner by which the parties will enforce their respective authorities and settle their claims against hazardous waste site owners, operators, or dischargers; and the manner by which the parties will settle their disputes.

BACKGROUND

Based on a recommendation of the Governor's Task Force on Toxics, Waste, and Technology, Governor Deukmejian issued Executive Order D-55-86, which states, in part, that the Department of Health Services (DHS), the State Water Resources Control Board (SWRCB), and the Regional Water Quality Control Boards (RWQCB) shall enter into an MOU that specifies each agency's responsibilities in hazardous waste site cleanup, defines standards and criteria for use in Remedial Action Plan (RAP) development, and identifies a conflict resolution process to resolve interagency disputes. Subsequently, the Legislature included a provision in the Supplemental Report of the 1988 Budget Act requiring the development of this MOU.

Statutes of the State of California, embodied in the state codes, authorize certain actions or express fundamental principles which must govern the intent and goals of the MOU. Relevant code sections include, but are not limited to, the following:

- A. DHS is mandated to carry out all hazardous waste management responsibilities imposed or authorized by the Resources Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and any regulations promulgated pursuant to these federal acts (Health and Safety Code [HSC] 25159.7).
- B. DHS shall prepare a plan for the expeditious implementation of the Hazardous Substance Cleanup Bond Act of 1984 which shall include procedures required for the development and adoption of final RAPs by DHS and RWQCB (HSC 25351.6 and 25334.5).
- C. DHS, or if appropriate, the RWQCB shall prepare or approve RAPs for all sites listed by DHS for Remedial Action (RA) (HSC 25356.1 and 25356).

- D. DHS or the RWQCB shall review and consider any public comments, revise the draft plan if appropriate, and then issue the final RAP. (HSC 25356).
- E. DHS shall implement procedures for the abatement of an imminent and substantial endangerment (HSC 25358.3).
- F. DHS is authorized to spend funds from the Hazardous Substance Account or the Hazardous Substance Cleanup Fund for removal or remedial actions on any site included on the list established pursuant to HSC 25356 only if DHS enters into an enforceable agreement or issues an order and determines in writing that the potential responsible party(s) is not in compliance with the order or agreement. (HSC 25355.5)
- G. The SWRCB and each RWQCB shall be the principal state agencies with primary responsibility for the coordination and control of water quality (Water Code [WC] 13001).
- H. Each RWQCB shall obtain coordinated action in water quality control, including the prevention and abatement of water pollution and nuisance (WC 13225).

Under direction from the Governor, DHS signed a Defense (Department)-State Memorandum of Agreement (DSMOA) in May 1990, which allows for funding state oversight of remedial actions at military facilities in California. Although both DHS and the State and Regional Boards are eligible to receive payment for their oversight costs, federal funding is limited and qualified. Separate agreements between DHS regional offices and the RWQCBs for specific sites will be required in order to allocate available funding. This MOU provides a basis for DHS and the Boards to agree on funding and performance at military facilities.

DHS, also, has recently signed an Agreement in Principle (AIP) with the U.S. Department of Energy (DOE). The AIP will provide reimbursement of state costs for oversight of specified environmental compliance activities at DOE facilities. An Interagency Agreement between the DHS Environmental Health Division and the SWRCB will specify water quality oversight tasks which the State and Regional Boards will perform.

THE DHS AND THE SWRCB AND THE RWQCBs AGREE TO THE FOLLOWING:

I. SCOPE

This MOU is effective immediately and is binding upon DHS, the SWRCB, and the nine RWQCBs. It covers the cleanup of hazardous substances at all sites or facilities where such substances must be cleaned up in order to protect public health or the environment. The cleanup of other substances is not covered under this agreement. Sites include, but are not limited to, sites listed on the National Priorities List (NPL) and in the DHS Site Mitigation annual work plan. This MOU shall be used to determine the relationship of the parties and to guide the site-specific communications between them on activities at the sites. The provisions of this MOU are applicable both at sites where a state agency is the lead agency as well as at sites where the U.S. Environmental Protection Agency, Region 9 (EPA) is the lead agency. In the latter case, the provisions of this MOU shall be utilized to determine which state agency will act as the liaison between the State and EPA and how the state agencies will coordinate their review and comment on site-specific documents submitted by EPA.

Contracts and agreements also exist which involve DHS, SWRCB, RWQCB, and local agencies in the cleanup of leaking underground storage tanks. There are also other specific agreements between state and/or federal agencies. This MOU is not intended to conflict with the provisions of those contracts and agreements nor is it intended to add procedure and requirements which the agencies agree are not necessary for the satisfactory cleanup of leaking underground storage tanks.

A Memorandum of Agreement (MOA) exists between DHS and the SWRCB regarding coordination of activities at facilities subject to regulation pursuant to RCRA. For coordination of cleanup activities at these facilities, the agencies should refer to both this MOU and the RCRA MOA.

II. PRINCIPLES

The parties recognize that certain principles, not found in law or regulation, should govern their conduct. One principle is that the participation of both agencies acting within their respective authorities, jurisdiction, and expertise, whether acting as lead agency or support agency, is essential for the successful cleanup of hazardous waste sites and is in the best interest of the State.

In the cleanup of hazardous waste sites, mutual trust, confidence, cooperation, and communication between the parties are to be expected. It is a basic aim of this MOU and the policy of the parties that duplication of effort in the site cleanup program be avoided. Public health and the environment are best served by each party minimizing duplication of effort on the greatest number of sites possible. Both parties do, however, recognize that there are certain situations where one or the other will have the necessary technical resources, expertise, or authority. To the extent staff and other resources allow, and in a manner set forth in this MOU, the parties agree to assist each other. This cooperative approach is in the best interest of public health and the environment.

Finally, the parties recognize that cleanup of hazardous waste sites throughout California can best be achieved if the state agencies act with consistency and predictability. Both the public and the responsible parties expect that state government will apply rational methodologies and standards to site cleanup. Compliance with the terms of this MOU will eliminate or significantly reduce any apparent inconsistencies between the agencies. Consistency will be achieved by agreement on minimum technical and procedural requirements, coordination of enforcement actions, close and constant communication between project staff, and exchange of Applicable or Relevant and Appropriate Requirements (ARARs) or state standards for site cleanup. If either agency is developing such standards, that agency will involve the other agency in the development at an early stage so that consistency in technical issues can be maintained.

III. IMPLEMENTATION

In order to facilitate implementation of this MOU, the parties will establish an "MOU Technical Advisory Committee" (TAC) within four months of the effective date of this MOU. The TAC will serve to provide guidance and advice to management and staff on technical issues that develop during performance under this agreement and will assist, if called upon, in the settlement of technical disputes. The TAC will also evaluate the achievement of the goals of the Executive Order and the compliance principles of this MOU and will provide an annual report to management. This report will be submitted by March 1 of each year, will cover the prior calendar year and will, if appropriate, include recommendations for modifications to this MOU to improve attainment of the principles of the parties. The TAC will consist of a total of six members, each at a level equivalent to Supervising Engineer, Supervising Hazardous Materials Specialist, or above, as follows: one member from DHS Headquarters, two members from DHS Regional Sections, one member from SWRCB, and two members from RWQCBs. Annually the TAC will elect one of its members as chairman who will be responsible for coordinating the activities of the TAC.

IV. LEAD AGENCY DETERMINATION

DHS Regional Offices and RWQCBs will meet to determine the lead agency as appropriate under this section.

- A. The agency which first discovers a potential or actual hazardous waste site shall serve as the lead agency until the criteria of this MOU are utilized to determine a lead agency.
- B. Within 180 days after the effective date of this MOU, the agencies shall determine the lead and support agencies for each hazardous waste site on which either agency plans to work in Fiscal Year 1990-91. Each Regional Board Executive Officer (EO) and Department Regional Administrator (RA) shall compile an inventory of hazardous waste sites within their respective regions and shall determine whether resources are or will be available to perform the tasks required by this MOU. The EO and RA shall then agree on which agency shall be lead and which shall be support for sites of common jurisdiction. Sites for which neither agency has resources shall be listed in a holding pool until resources become available or priorities change. This process shall be repeated for each subsequent fiscal year as necessary to implement this MOU. The designation of lead agency may be changed at any time by agreement of the agencies.
- C. The determination of a lead agency shall be made by considering the factors listed in Paragraph D of this section. It is probable that more than one factor may be applicable to a site. In these situations, more weight should be given to those factors listed first.
- D. The lead agency as between DHS and SWRCB/RWQCB, for the cleanup of hazardous waste sites shall be determined using the following guidance:
 1. DHS should be the lead agency at sites where there is no responsible party.
 2. If the site does not meet the criteria in number 1 above, then the following conditions apply:
 - a. If after reasonable enforcement actions are implemented, the responsible party is unwilling or is financially unable to perform cleanup and the expenditure of state Superfund monies is deemed appropriate to perform actual site cleanup, then DHS should be the lead agency.
 - b. If the site is on the NPL, then DHS should be the lead agency.
 - c. If one agency has a significantly longer history of involvement working to clean up the site, then it should be the lead agency.
 - d. If the source of the contamination is a leaking underground storage tank, then the RWQCB or a local agency, upon delegation by a Regional Board, or by contracting with the state Board, should be the lead agency.
 - e. If the contamination is primarily airborne, then DHS should be the lead agency in consultation with the Air Resources Board and the appropriate Air Quality Management District.
 - f. If the site is primarily a result of agricultural activities, then the RWQCB should be the lead agency.
 - g. If the source of the contamination is an inactive mine, then the RWQCB should be the lead agency.
 - h. If the contamination is confined to soils, then DHS should be the lead agency.
 - i. If the contamination is primarily impacting surface waters, then the RWQCB should be the lead agency.

- j. If the source of the contamination is a RCRA regulated disposal facility, then DHS should be the lead.
 - k. If the source of the contamination is a non-RCRA surface impoundment, then the RWQCB should be the lead agency.
 - l. If the source of the contamination is a landfill which would not normally be regulated by DHS, then the RWQCB should be the lead agency in consultation with the California Integrated Waste Management Board.
- E. Notwithstanding a determination under Paragraph D of this section, DHS Regional Offices and the RWQCB may otherwise agree which agency shall be lead agency at a particular site. Specific examples of situations where this provision may be used are where multiple sources are contributing to the same problem or where resource availability affects the determination; however, other situations may warrant a decision using this provision.
- F. The agency determined to be the lead agency for purposes of site cleanup under this MOU is not necessarily the lead agency for implementing programs or tasks that are applicable to the site but not within its authority or jurisdiction. Where the support agency happens to have sole or primary responsibility or exclusive capability for a program or task related to cleanup activities, then that agency shall perform those required tasks pursuant to its exclusive lead authority in a manner consistent with its role under this MOU. Examples of such tasks and programs include, but are not limited to, issuance of a National Pollutant Discharge Elimination System permit, approval of a transportation plan, regulation of nonhazardous wastes, enforcement of the Toxic Pits Control Act, approval of a solid waste water quality assessment test report, performance of a public health evaluation, or the imposition of restrictions for land use. The support agency will coordinate all activities described in this paragraph with the lead agency.
- G. Any dispute regarding the determination of the lead agency shall be resolved pursuant to Section VII.

V. RESPONSIBILITIES OF LEAD AND SUPPORT AGENCIES

A. Coordination Procedures

1. General

- a. The lead agency is responsible for coordinating and communicating with the support agency in a timely manner. This includes, but is not limited to, providing schedules, technical reports, correspondence, and enforcement papers; soliciting and responding to comment, analysis, evaluation, and advice; and meeting, conferring and discussing the project.
- b. The support agency is responsible for coordinating and communicating with the lead agency in a timely manner. This includes, but is not limited to, providing notification that selected sites are of particular interest; providing comment, analysis, evaluation, and advice, especially that within the unique expertise of the agency; and meeting, conferring, and discussing the project.
- c. EPA will be the lead agency for many sites listed on the NPL. The State will designate a state lead agency using the criteria specified in Section IV. The agency so designated has the responsibility of maintaining communications between the State and EPA. This agency does not have responsibility for ensuring completion of the tasks listed in Section V B. However, this agency shall ensure that comments from all state agencies

are transmitted to EPA and shall coordinate the resolution of any disputes so that the State presents only one position to EPA.

- d. Neither agency will significantly change its procedures for the cleanup of hazardous substances without notification to and review and comment from the other agency. Examples of such changes include technical guidance documents and applicable regulations.

2. Specific

- a. Each agency will coordinate with the other agencies on its enforcement activities as specified in Section VI.
- b. The lead agency shall provide to the support agency any California Environmental Quality Act (CEQA) documents at least ten working days prior to sending these documents to the state clearinghouse. If the support agency decides to comment, it shall do so within ten working days after receipt, or during the formal review process as mandated by CEQA.
- c. The lead agency shall contact the support agency to identify ARARs for each specific site at the following times:
 - (1) During the scoping phase of the remedial investigation/ feasibility study (RI/FS) or equivalent.
 - (2) During the site characterization phase of the RI or equivalent.
 - (3) During the development of alternatives in the FS or equivalent.
 - (4) During Remedial Design (RD).

The support agency shall respond within 30 calendar days after a request for ARARs. The lead agency shall apply the ARARs identified by the support agency or it shall provide to the support agency, at least 20 calendar days prior to informing the responsible party or the public, a written memorandum which identifies ARARs that will not be applied and the reasons for such decisions.

For those sites where EPA is the lead agency, the state lead agency as determined according to this MOU, shall notify EPA of all ARARs identified by the parties to this agreement. However, the party identifying the ARARs shall be responsible for defending the application of its ARARs should EPA elect not to apply them.

- d. The lead agency shall prepare or have the responsible party(ies) prepare the draft RAP or equivalent cleanup plan as an internal working draft document and provide a copy to the support agency at least 20 working days prior to general public distribution. If the support agency decides to comment, it will do so within 20 working days after receipt. Unless a shorter period of time is mutually agreed upon, any dispute shall be resolved by Section VII.
- e. The lead agency shall provide all other technical documents, as specified in Section V.B.9., and not otherwise referred to above, within a time sufficient for review and comment. In all cases, the lead agency shall provide at least 15 working days for review and response by a support agency unless a shorter period of time is mutually agreed upon. The support agency shall respond, as appropriate, in a timely manner.

B. Tasks

1. For sites listed on the NPL or in the DHS Site Mitigation annual work plan:
 - a. The lead agency shall be responsible for ensuring completion of the following tasks:
 - (1) Identifying imminent threats and initiate removal actions (if necessary).
 - (2) Identifying responsible parties.
 - (3) Issuing an order or entering into an enforceable agreement (if necessary).
 - (4) Coordinating enforcement actions (see Enforcement and Settlement Section VI).
 - (5) Establishing and maintaining an administrative record.
 - (6) Providing project oversight:
 - (i) Assigning a remedial project manager.
 - (ii) Maintaining a field presence including, if necessary, providing an on-scene coordinator.
 - (iii) Preparing and maintaining site schedules and workplans.
 - (iv) Reviewing technical documents listed in Section 9 of this paragraph for comment or approval.
 - (v) Managing applicable contracts.
 - (vi) Accounting for project costs.
 - (7) Preparing and/or reviewing RI/FS which includes:
 - (i) Site characterization.
 - (ii) RA alternatives.
 - (iii) Risk assessment.
 - (8) Requiring and approving the Quality Assurance Project Plan (QAPP) and Sampling and Analysis Plan (SAP).
 - (9) Providing technical documents to the support agency, including, but not limited to, as appropriate:
 - (i) Site schedule.
 - (ii) RI/FS workplan.
 - (iii) RI report.
 - (iv) FS report.

- (v) Health and Safety Plan.
 - (vi) QAPP.
 - (vii) SAP.
 - (viii) Community relations plan.
 - (ix) RAP.
 - (x) CEQA documents.
 - (xi) Transportation plan.
 - (10) Maintaining community relations:
 - (i) Developing and implementing a community relations program.
 - (ii) Managing any technical assistance grants.
 - (11) Compiling ARARs.
 - (12) Conducting a complete Public Health Evaluation (PHE) (as appropriate).
 - (13) Preparing and approving the RAP.
 - (14) Preparing and/or approving RD/RA
 - (15) Complying with CEQA.
 - (16) Recovering cost (if necessary).
 - (17) Overseeing operations and maintenance, including long-term monitoring (if necessary).
 - (18) Restricting land use (as appropriate).
 - b. The support agency shall be responsible for reviewing and, if appropriate, providing comments on the documents listed in Section V.B.1.a.(9) within the time periods determined utilizing Section V.A.2. or the lead agency may assume that the support agency does not have any comments. Additionally, the support agency shall always respond to a request for ARARs, and shall perform tasks as appropriate according to its exclusive authority or capability.
2. For sites not listed on the NPL nor on the DHS Site Mitigation annual work plan:
- a. The lead agency shall be responsible for ensuring completion of the following tasks:
 - (1) Conducting removal actions (if necessary).
 - (2) Identifying a responsible party.
 - (3) Coordinating enforcement action (see Enforcement and Settlement, Section VI).

- (4) Establishing and maintaining an administrative record.
 - (5) Providing project oversight.
 - (i) Assigning a project manager.
 - (ii) Preparing and maintaining site schedules and workplans.
 - (iii) Reviewing technical documents.
 - (iv) Maintaining a field presence, as necessary.
 - (6) Preparing or approving an Employee Health and Safety Plan.
 - (7) Characterizing the nature and extent of the problem.
 - (8) Requiring and approving quality assurance and sampling plans.
 - (9) Evaluating cleanup alternatives.
 - (10) Complying with CEQA.
 - (11) Conducting community relations.
 - (12) Preparing or approving the cleanup plan.
 - (13) Overseeing cleanup.
 - (14) Providing technical reports to the support agency.
- b. The support agency shall be responsible for reviewing and, if appropriate, providing written comments on the documents submitted pursuant to Section V.B.2.a within the time periods determined utilizing Section V.A.2. or the lead agency may assume that the support agency does not have any comments. Additionally, the support agency shall always respond to a request for ARARs, and shall perform tasks as appropriate according to its exclusive authority or capability.

C. Technical Requirements

1. The following outputs or items, in whole or in part, are required to be addressed for the completion of RAs at hazardous waste sites:
 - a. For sites Listed on the NPL or in the DHS Site Mitigation annual work plan:
 - (1) RAs (if needed).
 - (2) Identification of responsible parties.
 - (3) Enforceable agreement or order.
 - (4) Cooperative agreement.
 - (5) Administrative record.

- (6) Remedial project manager.
 - (7) On-scene coordinator.
 - (8) Site schedule.
 - (9) Workplans.
 - (10) Community relations plan.
 - (11) QAPP.
 - (12) SAP.
 - (13) RI.
 - (i) Site history.
 - (ii) Identification of sources.
 - (iii) Site characterization.
 - (14) ARARs.
 - (15) FS.
 - (16) Record of decision (ROD)/RAP
 - (17) RD
 - (18) RA.
 - (19) PHE.
 - (20) CEQA document.
 - (21) Health and Safety Plan.
 - (22) Transportation plan (if needed).
- b. For sites not listed on the NPL nor in the DHS Site Mitigation annual work plan:
- (1) RAs.
 - (2) Identification of responsible parties.
 - (3) Administrative record.
 - (4) Remedial project manager.
 - (5) Site schedule.
 - (6) Workplan.

- (7) Quality assurance plan.
- (8) Sampling and analysis plan.
- (9) RAP or cleanup plan.
 - (i) Site history.
 - (ii) Identification of sources.
 - (iii) Site characterization.
 - (iv) Feasible remedial alternative.
 - (v) RD.
- (10) Community relations plan.
- (11) RA.
- (12) Employee Health and Safety Plan.
- (13) Community Health and Safety Plan (if needed).
- (14) CEQA compliance.
- (15) Transportation plan (if needed).

- 2. The agencies shall define these requirements, as appropriate, according to 40 CFR 300 et seq. , and HSC 25350 et seq., in addition to the guidance documents listed in Attachment A.

VI. ENFORCEMENT AND SETTLEMENT

- A. For purposes of this MOU, enforcement means the action by an agency to compel performance by a responsible party, such as the issuance of an order or the filing of a complaint. Settlement means the resolution by agreement with the responsible party, in whole or in part, of matters in dispute, such as the performance required for satisfactory remedial action, claims for money, or liability.
- B. The lead agency will communicate with the other agencies regarding its enforcement and settlement activities for hazardous waste sites. Communication means, for example, notification at least 10 working days in advance, if feasible, of a decision to issue an order or to initiate settlement negotiations; provision of enforcement or settlement documents for information or for review and comment; and, to the extent feasible, modification of a proposed order or agreement to incorporate the other agency's concerns. Staffs will meet and confer, as necessary, during drafting of enforcement and settlement documents.
- C. Unnecessary or redundant enforcement documents are to be avoided. Neither agency will take enforcement actions that are not compatible or complementary to the enforcement actions of the other agencies. To the extent possible, consistent with preserving their respective authority or mandates, each agency will coordinate time schedules and demands so that responsible parties can respond to consistent direction.

- D. To the extent practicable, each agency will assist the other in enforcement. Information that may be used to determine compliance or noncompliance will be transmitted to the enforcing agency as soon as possible but no later than 15 working days after being obtained and formalized.
- E. Upon a determination of noncompliance with an administrative order and a decision to pursue litigation (i.e., referral to the Attorney General or filing a complaint), the responsible agency will notify the other agencies at least seven working days prior to referring a matter to the Attorney General. Each agency will coordinate its legal actions to the extent practicable so that the Attorney General may bring joined or consolidated causes of action.
- F. Negotiations may be commenced with a responsible party to enter into an enforceable agreement either to take cleanup action without the issuance of an order, to resolve noncompliance with an order that has been issued, or to resolve causes of action alleged in complaint. All decisions to negotiate with a responsible party will be coordinated between the agencies.
- G. The lead agency will act as lead spokesperson for the negotiating team. The lead spokesperson will be responsible only for initiating and maintaining communications with the responsible parties, for coordinating the State's position, and for directing the agenda for settlement. The negotiating team will be composed of representatives from each agency with authority, with legitimate claims, and electing to participate. For purposes of dispute resolution in Federal Facility Agreements (FFAs), the lead agency and support agency may agree to designate which state agency will cast the State's vote.

Each agency is responsible for presenting its respective position. If an agency fails to attend negotiations or to meet other negotiating responsibilities without good cause, or without notifying the other participating agency in advance, then that agency must either defer to negotiating participants on issues discussed at the missed negotiation or withdraw from further negotiations relative to that particular site.

However, where practicable, in order to avoid unnecessary expenditure of resources for conducting negotiations, the support agency, after prior notification to and agreement by the lead agency, may elect to withdraw from or not participate in active negotiations, either temporarily or permanently. In such cases, the support agency is responsible for providing to the lead agency the details of their specific concerns regarding settlement. If this information is not provided, the lead agency will negotiate in the best interest of the State, but will have no responsibility to negotiate on behalf of the support agency issues for which the lead agency has neither authority nor assistance.

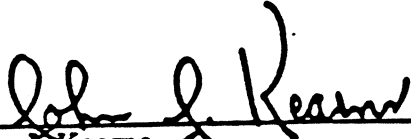
When the support agency does not attend negotiations, the lead agency is responsible for obtaining for the support agency terms of settlement identical to its own, provided that: the support agency provides the necessary information and assistance to the lead agency pursuant to this section; and the terms requested by the support agency are similar in scope and documentation to that of the lead agency ("identical terms" means similar percentage of settlement request or similar conditions as opposed to a dollar-for-dollar separation). Moreover, the lead agency is responsible for notifying the support agency if new issues arise which may be within the sole authority of the support agency, in order that the support agency has the opportunity to participate in those portions of the negotiations addressing such issues. The negotiation of FFAs with the federal government is an example of when this situation may occur. In this example, the lead agency will not settle for recovery of their costs without including those similarly justifiable costs of the support agency.

- H. All communications with a responsible party related to negotiations will be coordinated by the lead spokesperson. Documents related to negotiations will be shared freely between the agencies and such documents which are confidential will be maintained in a manner consistent with any applicable requirements for confidentiality.

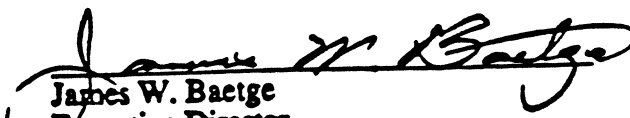
- I. Each agency will support the other during negotiations. A single position is essential, and the agency advocating the most conservative or stringent position will be responsible for defending its position. A disagreeing agency will remain silent or request a recess. All agencies involved should meet prior to each negotiating session in order to minimize disagreements.
- J. Before agreement or settlement with responsible parties can be reached, the concerns and claims of each agency regarding the issues to be agreed upon or settled will be resolved. An agency will not settle independently with responsible parties without advance concurrence by the other participating parties. Disputes shall be settled pursuant to the procedure described in Section VII.
- K. Settlement with a responsible party will include provision for payment by the responsible party for all oversight costs incurred or to be incurred by any negotiating agency that will participate in the RA procedure.

VII. DISPUTE RESOLUTION

- A. Disputes shall be resolved, if at all possible, through informal discussion, negotiation, and consensus. Such informal discussions may, if necessary, include staff at all levels, including those listed in Section VII.B.1. If the dispute cannot be resolved informally within a reasonable length of time or if continuing nonresolution of the dispute would place either party at a disadvantage, then either party may notify the other party that such a dispute exists and exercise the formal dispute resolution procedure described below.
- B. Disputes shall be resolved formally using the following procedure:
 - 1. Jointly the staffs of the agencies involved in the dispute shall prepare a memorandum describing the dispute. The lead agency shall provide copies to the appropriate RA of the Toxic Substances Control Program (TSCP) and to the Executive Officer (EO) of the appropriate Regional Board. The memorandum shall address and explain all sides to the dispute, shall state the consequences of each recommended decision and shall provide a date by which a decision is needed. The lead staff person for each agency shall co-sign the memorandum prior to submitting it to management.
 - 2. If the DHS RA and the RWQCB EO cannot resolve the dispute within the time requested in the memorandum, then they will jointly present written notification of the dispute to both the Executive Director (ED) of the SWRCB and the Deputy Director of the TSCP.
 - 3. If the SWRCB ED and the TSCP Deputy Director cannot resolve the dispute within 30 calendar days from the day the memorandum is delivered to them, then the memorandum shall be delivered to the SWRCB and the Director of DHS. If within 30 calendar days they cannot resolve the dispute, the memorandum shall be delivered to the Secretary of Environmental Affairs and to the Secretary of Health and Welfare. If within 30 calendar days they cannot resolve the dispute, the memorandum shall be delivered to the Governor.
 - 4. When the dispute is resolved, a written decision shall be provided to all parties to this MOU.
- C. During such time that any formal or informal dispute is not yet resolved, neither agency will comment adversely in public. The time required to resolve a dispute shall not be used to unnecessarily or unfairly delay action by either agency.



John J. Kearns
Acting Deputy Director
Toxic Substances Control Program
Department of Health Services
State of California



James W. Baetge
Executive Director
State Water Resources Control Board
State of California

Date: 7/30/90

Date: 7/31/90

ATTACHMENT A**APPLICABLE LAWS, REGULATIONS, AND GUIDANCE DOCUMENTS**

- A. California Water Code.**
- B. California Health and Safety Code.**
- C. Titles 22/23 (Subchapter 15) California Code of Regulations.**
- D. California Environmental Quality Act.**
- F. National Oil and Hazardous Substances Contingency Plan.**
- G. Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA.**
- H. Superfund Public Health Evaluation Manual.**
- I. Superfund Exposure Assessment Manual.**
- J. Methodology for Characterization of Uncertainty in Exposure Assessments.**
- K. RCRA Ground-Water Monitoring Technical Enforcement Guidance Document.**
- L. The Endangerment Assessment Handbook.**
- M. Superfund Remedial Design and Remedial Action Guidance.**
- N. Standard Operation Safety Guides (OSWER).**
- O. Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities (DHS [NIOSH]).**
- P. Data Quality Objectives for Remedial Response Activities (OSWER).**
- Q. Samplers and Sampling Procedures for Hazardous Waste Sources (EPA).**
- R. A Compendium of Superfund Field Operations Methods.**
- S. Handbook on Remedial Action on Waste Disposal Sites.**
- T. Uncontrolled Hazardous Waste Site Ranking System--A User's Manual.**
- U. Community Relations in Superfund: A Handbook (EPA) 03/86.**
- V. The California Site Mitigation Decision Tree Manual.**
- W. Small Site Cleanup Guidance Document (to be completed).**
- X. Leaking Underground Fuel Tank Manual.**

ATTACHMENT B

ACRONYMS USED IN THE MEMORANDUM OF UNDERSTANDING

1. AIP Agreement In Principle
2. ARARS Applicable or Relevant and Appropriate Requirements
3. CERCLA Comprehensive Environmental Response, Compensation, and Liability Act
4. CEQA California Environmental Quality Act
5. DHS Department of Health Services
6. DOE U.S. Department of Energy
7. DSMOA Defense (Department)-State Memorandum of Agreement
8. ED Executive Director
9. EO Executive Officer
10. EPA U.S. Environmental Protection Agency, Region 9
11. FFA Federal Facility Agreement
12. FS Feasibility Study
13. HSC Health and Safety Code
14. MOA Memorandum of Agreement
15. MOU Memorandum of Understanding
16. NPL National Priorities List
17. PHE Public Health Evaluation
18. QAPP Quality Assurance Project Plan
19. RA Remedial Action or Regional Administrator
20. RAP Remedial Action Plan (State equivalent to ROD)
21. RCRA Resource Conservation and Recovery Act
22. RD Remedial Design
23. RI Remedial Investigation
24. ROD Record of Decision (Federal equivalent to RAP)
25. RWQCB Regional Water Quality Control Board

- 26. SAP Sampling and Analysis Plan
- 27. SWRCB State Water Resources Control Board
- 28. TAC Technical Advisory Committee
- 29. TSCP Toxic Substances Control Program
- 30. WC Water Code